

REPORT

OF

THE LAND ACQUISITION REVIEW COMMITTEE

ON

LAND ACQUISITION ACT, 1894



1970

GOVERNMENT OF INDIA
MINISTRY OF FOOD, AGRICULTURE, COMMUNITY DEVELOPMENT AND
COOPERATION (DEPARTMENT OF AGRICULTURE)
NEW DELHI

(i)

LAND ACQUISITION REVIEW COMMITTEE Appointed on July 27, 1967

COMPOSITION

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SHRI ANAND NARAIN MULLA, M.P.

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3. Shri D. S. Desai, Minister for Revenue, Maharashtra.
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23. Shri M. B. Raja Rao, M.L.A. (Andhra Pradesh).
24. Shri Udit Narain Sharma, Ex. Minister Revenue (U.P.).
25. Shri K. Sivasubramaniam, Secretary, Revenue, Tamilnadu, till 29-8-1969.
26. Shri K. Sen, Member, Board of Revenue (Government of West Bengal).
27. Shri P. K. Nambiar, Secretary Revenue, Tamilnadu, w.e.f. 30-8-1969.
28. Dr. Anup Singh, M.P.*

Member—Secretary

29. Shri D. B. Kulkarni, Joint Secretary to the Government of India.

Report presented on March 18, 1970.

*Dr. Anup Singh, M. P. was associated with the work of the Committee till his death on 28-1-1969.

(ii)

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Anand Narain Mulla,
Chairman, Land Acquisition Review Committee,
Ministry of Food & Agriculture, Govt. of India.
Member of Parliament
(Lok Sabha)

29, Feroze Shah Road
NEW DELHI-1.
18th March, 1970.

MY DEAR BABU JAGJIVAN RAMJI,

It is with great pleasure that I am presenting the Report of the Land Acquisition Review Committee to you. This task was entrusted to me more than two and a half years ago and I am conscious of the fact that I have taken a long time in completing it. But the character and contents of the Report itself are my only excuse for this delay and if this plea fails me I do not think I can put forward any other ground to explain or justify it.

We were 28 strong when we started the work. But one of us could not accompany us throughout the journey and we lost him on the way. Dr. Anup Singh who was an extremely valued colleague died over an year ago. Another colleague Shri K. S. Sivasubramaniam, who was extremely intelligent and helpful left us when we were almost on the last lap, on account of administrative changes and Shri P. K. Nambiar became his able substitute. The Committee at the end consisted of 27 Members only and this report is the result of their deliberations. A great majority of the members signed the report without any reservations but a few while generally agreeing with recommendations signed the Report subject to their disagreement on some points. Only 3 notes of dissent were, however, received and they have been incorporated in the Report.

Even a cursory glance at the Report will convince any unprejudiced mind that all the Members of the Committee gave their best to tackle the complex and ticklish questions which had to be answered and while it is always possible to disagree it cannot be said that the questions were not given due consideration. Actually the Report incorporates the consensus of opinion reached earlier and it was also circulated to all the members before it was considered and adopted. I shall always value the help and cooperation which I received from all the Members and this contributed a great deal in giving the report its final form and shape.

While examining the witnesses or discussing the problems amongst ourselves several basic objectives and fundamental values again and again dominated my thoughts and gave a direction to my opinions. This is not apparent in the Report. I feel that the Report will not be complete without the subjective background. It would be like a picture without a frame. I am, therefore, adding an introduction in which I propose to deal briefly with some of the social, legal and constitutional aspects which are closely connected with the law relating to Land Acquisition. While writing this introduction, I will use the first person singular for I can only say how I approached these questions. I cannot commit others to my way of thinking. It is well known that you can reach the same conclusions by following more than one line of reasoning and though some of my colleagues might have ascended the same steps with me I would not be justified in presuming any such thing.

I remain,
Yours sincerely,
(Sd) A. N. MULLA.

Shri Jagjivan Ram,
Union Minister of Food, Agriculture,
Community Development & Cooperation,
Krishi Bhavan,
New Delhi.

INTRODUCTION

The Land Acquisition Act is over 75 years old. When enacted it was not faced with the requirements of the Constitution of India. It is remarkable that broadly speaking it fulfilled the needs of the community for such a length of time. Even today the Act is not so much vulnerable on its provisions as on the way the executive authority tried to implement them. From one end of the country to the other the same story has been repeated again and again (with provincial variations) that it has been used as an engine of oppression by the administrative authorities and the weaker and poorer sections of the community have suffered the most. The complaint (not without substance) is that only an illusory compensation was awarded in an appreciable number of cases and that too was not paid for years. Emergent acquisition was the order of the day without the existence of any emergency. The law was ignored and the exception was made the law perhaps on the ground that observance of law would have meant delay. The executive mind considered the delay in acquiring possession as a matter of great importance but the delay in payment of compensation to poor landowners as of no consequence. This callous indifference was manifested again and again. Many of the sufferers lost their hereditary occupation also which alone provided them with some sort of economic security. As a result quite an appreciable number of citizens were completely uprooted and turned into refugees in their own land of birth.

These conditions naturally raise several questions some of which are as follows:—

- (1) Is there any conflict between the rights of the citizens and the developmental plans of the State? Can they not be synchronised in an harmonious pattern?
- (2) Is there any human, social or moral sanction behind the urge to build the edifice of the State on the graveyard of its own citizens? Can this be legally supported?
- (3) How should the word compensation be interpreted? Must the State pay a 'just equivalent' or 'market value' in all cases of acquisition?
- (4) How to introduce a more just and humane way of dealing with the problem and expedite the whole process and also bring about a uniformity in the operation of the law?

I had to seek the answer to these questions within the framework of the law of the land as interpreted by the Supreme Court and the recommendations contained in the report are in keeping with these answers. I must, however, confess that if the decisions of the Supreme Court had not stood in my way I would have given a slightly different

opinion on question number (3) relating to compensation. I am, however, convinced in my mind that in a report of this character we cannot and should not make recommendations which are obviously contrary to the existing law. These differences should be ironed out once for all on the constitutional plane first and not again and again in the legislative field only to find the constitutional hurdle blocking the way. I will revert to this conflict later on. At this stage I will like to dilate a little on the considerations (juristic and otherwise) which, in my opinion, should govern a law like the Land Acquisition Act.

Let me first enunciate some of the important facts and realities that exist today in our country. Laws are not enacted in the cloistered seclusion of thought and fancy (even poetry cannot survive in this rarefied atmosphere now) but in the hard struggle of corporate and competitive life. This struggle is an ever changing pattern and laws are primarily enacted to meet the existing challenge. I think it can safely be said that in a peoples Government laws are the instruments to achieve the social and political objectives of the State which through the majority of elected representatives translates the urge of the people into the words of the statute and this provides a rule of conduct and a charter of rights for the corporate life of the community to help it in its onward march towards its goal.

Coming back to the stark realities which we have to face today and which can be ignored only at our peril, they may be summarised as follows:—

- (a) The increasing population and the fast growing knowledge of man, while on the one hand is adding to the pressure of life every moment, on the other hand it is also constantly presenting new challenges, new aspects of human relationship and new values of corporate and social existence. Every day some old horizon fades and a new horizon comes before our eyes. If the 'Rule of Law' is to survive it must adapt itself to this pattern. If life is running law will also have to run to overtake it and it cannot continue with its old slow and stately walk. Again and again this cry is raised in some quarters that we have amended the Constitution frequently. This cry ignores what is mentioned above. The question which should be raised is not the frequency of the amendments but whether any one of these amendments was not needed or unnecessary. I have not heard any one advancing this criticism.
- (b) We are now knocking at the door of a Welfare State. The objectives and values of a Welfare State are different from the objectives and values of a Democratic State. A Welfare

State gives right to citizens and not to individuals and these rights are subject to reasonable restrictions in the interests of the community as a whole. The basic difference is that stress is shifted from the fundamental rights to the proviso on 'reasonable restrictions' that governs all of them. The community takes precedence over the individual. Today the doctrine of absolute liberty in any field of life which affects the community without reasonable restrictions is as dead as the Queen of Sheba and it cannot be revived. The process of evolution is constantly erasing old words and introducing new ones in the dictionary of life.

(c) We are an under-developed country. We have to move at a fast pace if we do not want to be left behind. The country as a whole has to make this effort and not a few individuals. Poor and under nourished bodies, even if they try to run cannot bear the strain and they will soon be out of breath. The people of the country must be made more prosperous and strong by striving for a better economic balance in the life of the citizens. The maldistribution of wealth is primarily responsible for this economic imbalance. There is a clear conflict between the interests of different groups of citizens. On one side there is a small group of rich people with vested interests holding monopolies, and on the other side there are teeming millions whose house is a virtual hovel, whose entire wardrobe is on their bodies and whose total wealth can be placed in their fists.

This conflict cannot be reconciled by closing our eyes and by saying that they are all citizens and the interests of both the groups should be equally protected. A time has come when priorities must be determined. As early as 1938 Pt. Jawahar Lal Nehru wrote an article entitled 'Whither India'. In this article* he said:—

"We will have to give an answer to the question, which is the group for whose liberty we are primarily striving. We cannot avoid giving an answer to this question. If we do not answer it today we will have to do so tomorrow. Do we give priority to the group consisting of millions of farmers and labourers or to some other smaller group? We should certainly give liberty to as many groups as is possible but we should not forget which is the real group for whom we stand primarily, and if a conflict arises between their interests, whose side we have to take. To say that we will not

answer this question is also an answer for this shows that we want the 'status-quo' to be maintained."

We did not try to answer this question during the last 20 years but now we cannot avoid answering it because the people today are again restive and on the march and they want a categorical answer. This answer has to be given by all citizens and 'citizens' in this context includes not only the members of the Government and the legislators but also the judges.

Today the crux of the whole problem is that while the majority of the representatives of the people admit this irreconcilable conflict and want to side with the poverty stricken and weaker section of the citizens against the rich and privileged group by gradually introducing laws to lessen this imbalance, the majority of the Supreme Court Judges are of the opinion that the guarantee of fundamental rights in the Constitution makes no difference between the rich and the poor and the rights of all are to be equally protected. They, therefore, declare all such enactments *ultra vires* of the Constitution. It seems that they do not accept the basic conflict between the rights of the rich and the poor and so it does not strike them that when they in some cases are protecting the rights of the rich they are really denying the rights of the poor and thus perpetuating a social order which is unjust and which does not become just because it has been existing since a long time. The opinion held by the majority of the judges can either be right or wrong. If it is wrong then it is necessary that the judges should reconsider their opinion and hold such legislation which tries to lessen this imbalance to be permissible, under the Constitution of India. If it is right then it becomes obvious that the words of the Constitution do not allow any preference to be given to the rights of the poor and so it becomes an urgent case where the amendment of the relevant articles of the Constitution is indicated, if the idea of a new social order is not to be given up. But the unfortunate judgment by the majority of judges in Golaknath's case has closed even that door. From some of its decisions it is abundantly clear that the Supreme Court wants (what Pt. Nehru said in the extract cited above) that the status-quo should continue.

What is the duty of the representatives of the people in this situation? Obviously this stalemate has to be resolved because while other games can end in a draw, the game of life which is another name for the process of evolution does not accept this end. Where evolution stops revolution steps

* This extract is not in Pt. Nehru's words. I could not trace the original article but in 1940 my translations of Pt. Nehru's selected writings in Urdu were published by the Indian Press Ltd., Allahabad under the title 'Mazamin-e-Nehru' and this article was included in it. My Urdu translation was as follows:—

"Ham ko is sawal ka jawab ki ham kis jamaaton ya kin jamaaton ki azadi ke liye khas taur par sargarm hain zaroor dena parega. Ham is ka jawab dene se bach nahin sakte. Aj nanin to kal jawab dena hoga. Kya ham kashkaron aur mazdooron ke jam meghsfeer ko apni fehrisht men sab se pahli jagah dete hain ya kisi doosri choti jamaat ko? Ham jitne bhi garohon ya jamaaton ko azadi ki nemat de saken zaroor den lekin yeh na bhoool jayan ki dar asl ham kis ke tarafdar hain aur agar in garohon ki aghraz men ikhtilaf paida hua to ham ko kis ka sath dena hai. Yeh kahna ki ham is sawal ka jawab nahin denge yeh bhi ek jawab hai kyonki yeh zahir karti hai ki ham maujooda nizam ki barqarari ke hain."

in. It is unfortunate that this end has been reached not so much on account of the compulsion of the words of the Constitution as due to a conscious or unconscious feeling of distrust which the judges entertained against the legislators. This underlying suspicion can easily be gathered by reading the majority decision in Golaknath's case. In my opinion the relations between the legislature and the judiciary should not be based on the suspicions which they may entertain against each other but on an adjustment of the respective roles assigned to them, in the concept of a Welfare State. I have deliberately used the term 'Welfare State' in preference to 'Democratic State' for they are not synonymous and give different meanings.

It should be remembered that even after centuries of evolution the human mind has not yet succeeded in giving that precision to the 'written word' that it should not be capable of more than one interpretation. It is this failing which gives an headache to the judges and provides a happy hunting ground to the members of the bar. That the articles of the Constitution of India also suffer from this infirmity is abundantly proved from the way that a split occurred in the opinion of judges "6 versus 5" in Golaknath's case. Surely no single person can even think of urging that the 6 judges who gave the majority decision were more learned, more clear headed or more able than the other 5. Actually if we count the heads and take into account the earlier two decisions also the alignment comes to 7 versus 13—almost two to one against the majority decision. On these facts can any one who is not prejudiced escape the conclusion that the words of the relative articles of the Constitution of India are either conflicting or lacking precision and can be interpreted in more than one way. Once this is accepted two questions arise.—

- (1) Should the ambiguous or unprecise words of the law be permitted to remain as they are and no attempt should be made to give them clarity and precision ?
- (2) If clarity is to be given to the words of the law does it fall within the legislative area or the judicial area or in the area of none of them but what may be called the peoples area ?

I think, barring those who want to have the status-quo maintained and the deadlock to continue, no one would answer the first question in the affirmative. Law and such an important piece of law cannot be left in such an uncertain state. If for some reason this question cannot be tackled today it will have to be tackled tomorrow. The majority view in a case at a particular moment when it has taken such a disputed decision cannot be the final arbiter of a nation's destiny.

Coming to the second question, in my opinion the area does not fall within the judicial sphere. It is a question of giving contents to enactments, of giving one voice to a law which speaks with many voices and not of interpreting the words of

the statute. I think it clearly falls within the legislative area. I do not see any adequate reason why the decision of the elected representatives of the people should not be accepted as the exercise of the will of the people. It should be remembered that the Parliament of India today is far more representative of the will of the people than the Constituent Assembly which framed the Constitution for it is almost a wholly elected body by adult franchise and not the restricted franchise on which the members of the Constituent Assembly were elected. There were also many nominated members in the Constituent Assembly and their number was also only about half of the present Lok Sabha alone.

I may here quote an extract from a recent lecture delivered by Dr. P. B. Gajendragadkar. It was printed in the Delhi Edition of National Herald on the 21st of February, 1970. He said:—

"My thesis is that the Indian Constitution... has enjoined upon Indian Democracy the task of creating a new social order where social equality will prevail and political and economic justice will be the order of the day."

With respect I will say that I am in complete agreement with this opinion and I feel that it is not the words of the Constitution that block the way of establishing a new social order but the unfortunate interpretation given to it by the majority of judges in Golaknath's case.

It is not necessary to dilate upon this point here. It would be sufficient if I only quote a few articles from Part 4 of the Constitution of India which is entitled "Directive Principles of State Policy":—

Article 38 : The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Article 39 : The State shall in particular, direct its policy towards securing—(a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

Article 46 : The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and the Scheduled Tribes.....

These articles not only give a clear call to bring about a new social order but under Article 37 describes the establishment of such an order as a fundamental directive in the governance of the country and states that it shall be the duty of the Government to apply these principles in making laws.

These articles have only given the name of directive principles to the thoughts of Pt. Nehru cited earlier. To use a mataphore Part 3 of the Constitution prescribes the discipline to be observed in the onward march and Part 4 gives us the goal. To ignore the goal and to have eyes only for the disciplinary rules is likely to distort the view for the picture is not seen in its true perspective.

I now revert back to the point which was responsible for all this discussion. I think that unless the Constitutional position is straightened out the attempts to bring about a new social order are not likely to materialise or will take a very long time. Take the question of compensation for example. Compensation can be of 3 kinds:

- (1) A just equivalent;
- (2) not a just equivalent but also not an illusory equivalent; and
- (3) an illusory equivalent.

I have heard no one advocating an illusory equivalent for it is another name for confiscation and though in some tatalitarian ideologies it may be permissible, it has no place either in a democratic state or a welfare state. We are thus left with two forms of compensation and left to myself (without the decisions of the Supreme Court standing in my way) I would have recommended a slab system which the Government, the people and also the courts of law have accepted in some forms of taxation. This slab system has not been held to be unconstitutional when applied to the Income Tax Act. I, therefore, completely fail to understand how the same slab system when applied to payment of compensation for acquisition of land can be found to be unconstitutional. But my opinion is not the law and the Judges of the Supreme Court when dealing with this point have observed* :—

“The difference in cuts is being justified on behalf of the State on the same principle on which (for example) the slab system exists for purposes of Income Tax. We, are, however, of the opinion that there is no comparison between the slab system of income tax rates and the present cuts. Taxation is a compulsory levy from each individual for the purpose of the maintenance of the State. We may, therefore, reasonably expect that a rich man may be required to make a contribution which may be higher than what may be proportionately due from his income for that purpose as compared to a poor man. This principle cannot be applied in a case where a person is deprived of his property under power of ‘Eminent Domain’ for which he is entitled to compensation. There is no reason why when two persons are deprived of their property, one richer than the other they should be paid at different rates when the property of which they are deprived is of the same kind and differs only in extent. No such principle can

be applied in a case where compensation is being granted to a person for deprivation of his property.”

It is evident from the extract cited above that while the judges considered a discrimination for the purpose of the maintenance of the State as reasonable they did not consider a discrimination for the purpose of advancing towards the objectives mentioned in the directive principles as reasonable. Again they permitted a greater cut in the richer man's recently earned wealth by way of taxation but if the wealth was turned into property or existed in the form of property in their opinion it could not be acquired unless full value was given. This is due to the fact that in interpreting the term ‘Reasonable Restriction’ in the provisos, the relationship between the restriction or discrimination and the directive principles is being ignored and not taken into account. I offer my opinion with difference but I think that so long as there is a reasonable nexus between the proposed enactment restricting some fundamental right or creating some discrimination and any one of the objectives mentioned in the directive principles it is protected by the term ‘reasonable restriction’ used in the provisos and not to accept such restriction as reasonable amounts to entering the ‘Political Thicket’ which is outside judicial territory. It is only where this link does not exist that the law becomes assailable for then the protection of the relevant proviso is removed. It follows that in my opinion the word ‘reasonable’ has also a social and political shade of meaning and this part is completely in the legislative territory. The judiciary should not attempt to put the legislature in chains when it is engaged only in its legislative activity.

I think that the application of a slab system for assessing compensation can be reasonably defended on the ground that the wealth of the rich is to be kept within limits so that the surplus saved by the State may be utilised to improve the living conditions of the poor and thus by lessening the concentration of wealth create a social order more evenly balanced and more conducive to promote common good. I think it would be better if the social objectives are clearly mentioned in the preambles of all new enactments.

The concept of equality before the ‘Law’ or equal protection of ‘Laws’ becomes a mockery if in its interpretation it tends to perpetuate existing inequalities. It is also in direct conflict with the directive principles given in Part 4 of the Constitution. I think this slab system will go a long way in protecting the poor and the weak and at the same time will appreciably increase the capacity of the State to proceed with its developmental plans for the welfare of the community.

There is only one other aspect on which I want to say something here. “Democracy” or “Welfare State” is another name for the ‘Rule of Law’. But the word ‘Law’ used in this phrase means a living

* *Krimbil Kunhikonam v. State of Kerala*—AIR 1962 SC, page 723. This view was approved again in *A.P. Krishnaswamy Naidu v. The State of Madras*, AIR 1964 SC, page 1515.

law and not a dead law. It is only when law is advancing from stage to stage and not from precedent to precedent that it remains alive. Law is a flexible concept and not a rigid chain. It is an instrument of evolution and not a final determination of the pattern of life, or social or human values. And one thing more. Law in this context includes all laws and the Constitution is as much subject to this overriding consideration as any other law. It would become a dead weight if its pronouncements are not woven in a thread of evolution for this alone gives it that flexibility which can meet the changing challenge of life.

For this journey from stage to stage a judge should be well versed not only in the 'written law' but also in the 'unwritten law'. Actually this 'Unwritten Law' which is another name for the will of the people is even more important than the 'written law' for wherever two interpretations of the written word can be made the interpretation which is in keeping with the 'unwritten law' should be preferred. The legislative process in a democratic State is really nothing else but a continuous act of turning the 'unwritten law' into 'written law'.

Before I end I will like to pay my humble tribute to the judiciary of my country. They have

worked in calm days as well as in stormy days and by and large it can be said that they have recognised the word of 'Law' as the only measure of their duty. With their independence they have created a confidence in the 'Rule of Law' and thus they have strengthened the roots of democracy in this land. It is, therefore, all the more surprising that in Golaknath's case the judges went out of their way to occupy the legislative territory and even adopted the tone of a school master towards erring boys who are likely to misbehave. Similarly in the recent bank nationalisation case they have claimed back certain territory within the orbit of article 19 which in their earlier decisions they had conceded did not belong to it in view of the provisions of Article 31(2). The difference of opinion should not be voiced in such a way and the Parliament when it takes up this question should also see to it that this disagreement is not expressed in the language of anger or conflict. I have always found reason to be far more persuasive than harsh words and it is my hope that in the final analysis the Supreme Court will not stop the legislators from becoming the architects of a new social order but will become the defender of that order.

ANAND NARAIN MULLA,
Chairman,

Land Acquisition Review Committee.

DATED: 24th February 1970.



CONTENTS

PAGE

1. CHAPTER 1—Constitution of the Committee, its terms of reference and the scheme of the Report etc.	1
2. CHAPTER 2—Principles which should govern acquisition of land for a public purpose	7
3. CHAPTER 3—Principles which should govern acquisition of land for companies in the public and private sectors under the Land Acquisition Act, 1894	25
4. CHAPTER 4—Constitutional requirements for compulsory acquisition and our approach	41
5. CHAPTER 5—Principles for determining compensation	63
6. CHAPTER 6—Forum and Procedure for determining compensation	93
7. CHAPTER 7—Procedural delays and remedies therefor.	111
8. CHAPTER 8—Scope of special powers for acquisition of land in cases of urgency/emergency.	
9. CHAPTER 9—Extent of Government responsibility for rehabilitation of evicted families and recommendations about discharge of this responsibility	
10. CHAPTER 10—Betterment levy	
11. CHAPTER 11—Feasibility of enacting a uniform law on land acquisition	
12. CHAPTER 12—Recommendations on other matters for improvement in the Land Acquisition Act	
13. Minutes of Dissent	
14. A summary of the main conclusions and recommendations of the Committee	

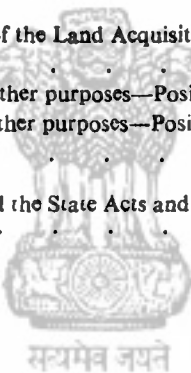


LIST OF ANNEXURES

S.No.	Chapter No.	Paragraph No. in which quoted	Title
1	Chapter 2	(Ref. Para 2.21)	Public Purpose as defined in the Central and the State Acts and in the Draft as proposed by the Law Commission.
2	Chapter 3	(Ref. Para 3.20)	Land Acquisition (Companies) Rules, 1963.
		(Ref. Para 3.34)	List of Statutory Corporations and Govt. companies under direct Central Govt. management.
3	Chapter 4	(Ref. Para 4.5)	Extracts of Art. 31, 31-A & 31-B and the 9th Schedule of the Constitution.
4	Chapter 5	(Ref. Para 5.83)	Abstract of the Proceedings of the Council of Governor General of India, assembled for the purpose of making laws & Regulations under the provisions of the Indian Council Acts, 1891 & 1892 (24 & 25 Vict., Cap. 67, and 55 & 56 Vict., Cap. 14) relating to Market value and renstatement.
		(Ref. Para 5.134)	(1) The Punjab Land Rev. Act, 1871 (XXXIII of 1871). (2) The Ajmer Land & Rev. Regulations (XI of 1877). (3) The Bombay Land Revenue Code (Bombay Act V of 1879). (4) The Central Provinces Land Rev. Act (XVIII of 1881).
		(Ref. Para 5.22)	The Land Compensation Act, 1961 Ch. 33 Part II—General provisions for determining compensation.
5	Chapter 6	(Ref. Para 6.69)	Extracts of the relevant provisions from the Draft Bill of the Law Commission. (Sections 12, 20, 54, 57, 58, 59).
6	Chapter 7	(Ref. Para 7.21)	Scheme of the Law Commission laying down time limits for each stage of acquisition proceedings.
		(Ref. Para 7.25)	Views of the State Govts. in regard to the causes of delay and remedies.
		(Ref. Para 7.42 and 7.44)	Relevant extracts of Sections 8, 10 & 11 of the Draft Bill of the Law Commission.
7	Chapter 8	(Ref. Para 8.20)	Extracts from the Draft Bill of the Law Commission—Taking possession with consent or in urgent cases. (Sections 31 to 34).
8	Chapter 9	(Ref. Para 9.40)	A statement giving details of facilities/amenities provided by the various project authorities for resettlement of displaced persons.
		(Ref. Para 9.54)	Government of India directive about the principles to be kept in view by the Boards of Directors & Managing Directors/Chairman of Public Sector Projects while making recruitment to posts within their projects.
9	Chapter 11	(Ref. Para 11.20)	A summary of Principles of Compensation in other Central Acts which prescribe different Principles.
		(Ref. Para 11.23)	A list of enactments permitting Govt., to acquire land for specific purposes such as town planning/improvement etc. which adopt the principles of Sections 23 & 24 of the Central Land Acquisition Act.
		(Ref. Para 11.23)	A list of enactments which adopt the principles of Sections 23 & 24 of the Central Land Acquisition Act subject to modifications & additions when acquisition is sought to be made for specific purposes such as town planning/improvement etc.
		(Ref. Para 11.23)	A comparative analysis of the modified and additional principles of compensation for acquisition of land for specific purposes such as Town Planning/improvement etc.
10	Chapter 12		Extracts from the Draft Bill of the Law Commission. (Sections 2(j), 2(i), 64, 70, 71, 77, 78 & 79).

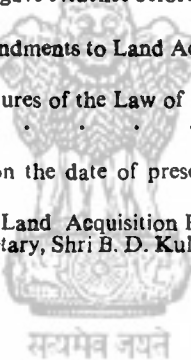
INDEX

	PARA No.
I. Whether an Exhaustive definition of public purpose should be given in the Land acquisition Act	2.1 to 2.26.
(i) Power of compulsory acquisition by the State	2.1.
(ii) Public purpose a condition precedent	2.2.
(iii) Whether public purpose should be defined	2.3.
(iv) Test of public purpose as laid down by Courts	2.5.
(v) Instances of public purpose—India	2.8.
(vi) Instances of public purpose—U.S.A.	2.9.
(vii) Distinction between public purpose and private purpose	2.10.
(viii) Public purpose not defined precisely by American Courts	2.15.
(ix) Public purpose definition—Australia	2.16.
(x) Feasibility of definition of public purpose—View of our Supreme Court	2.17.
(xi) Views of the Law Commission	2.18.
(xii) Views of American Jurists	2.19.
(xiii) Our view	2.20.
(xiv) Our Recommendations	2.22.
(xv) What should not constitute a public purpose	2.25.
II. Whether the existence of public purpose should be made justiciable	2.27. to 2.31.
(i) Our Recommendation	2.31.
III. Whether use of land for any public purpose other than the one for which its possession was taken should be permitted or whether, in the alternative, the land should be made available to the original owner or his heirs in case the same is not used for the purpose for which it was acquired	2.32. to 2.44.
(i) Use of land for other purpose—S. 16 of the Land Acquisition Act	2.34.
(ii) Position in Gujarat	2.35.
(iii) Appropriation of superfluous land to other purposes—Position in the U.S.A.	2.36.
(iv) Appropriation of superfluous land to other purposes—Position in U.K.	2.39.
(v) Our Recommendation	2.43.
IV. Public purpose as defined in the Central and the State Acts and in the draft as proposed by the Law Commission	Annexure.



LIST OF APPENDICES

	PAGE
APPENDIX 1—Governor of India Resolution setting up the Committee to examine the framework of the Land Acquisition Act, 1894	
APPENDIX 2—Speech of Shri Annasaheb P. Shinde, Minister of State in the Union Ministry of Food, Agriculture, C. D. & C. at the Inaugural Session of the Land Acquisition Review Committee, in New Delhi on 14th August, 1967	
APPENDIX 3—Inaugural Address by the Chairman, Shri Anand Narain Mulla, at the Inaugural Session of the Land Acquisition Review Committee in New Delhi on 14th August, 1967.	
APPENDIX 4—Circular letter dated 9th October, 1967 issued to State Governments/Organisations/persons interested etc. soliciting replies to the questionnaire	
APPENDIX 5—Questionnaire	
APPENDIX 6—List of persons organisations/Government Departments who furnished Memoranda/replies to the questionnaire	
APPENDIX 7—List of papers dealing with various aspects of the law of compulsory acquisition and/or papers giving factual data etc. circulated to the Members of the Land Acquisition Review Committee	
APPENDIX 8—List of places visited by the Land Acquisition Review Committee	
APPENDIX 9—List of State Ministers, M.P.s and M.L.As and High Officers of Central and State Governments who gave evidence/furnished views to the Land Acquisition Review Committee	
APPENDIX 10—List of witnesses who appeared and gave evidence before the Land Acquisition Review Committee.	
APPENDIX 11—Comparative analysis of State amendments to Land Acquisition Act, 1894	
APPENDIX 12—Summary of the distinguishing features of the Law of Land Acquisition as in force in the various States	
APPENDIX 13—Secretariat of the Committee as on the date of presentation	
APPENDIX 14—Text of Resolution passed by the Land Acquisition Review Committee in appreciation of the work done by the Member-Secretary, Shri B. D. Kulkarni	



INDEX

	PARA No.
1. Appointment and terms of reference	1.1.
2. Completion of preliminaries	1.3.
3. Questionnaire	1.4.
4. Recording of evidence	1.7.
5. Informational Basis	1.9.
6. Cooperation received from States, Public and Press	1.10.
7. Scheme of the Report	1.14.





CHAPTER 1

THE COMMITTEE

SCHEME OF THE



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CHAPTER 1

Constitution of the Committee, its Terms of Reference and the Scheme of the Report etc.

During the consideration of the Land Acquisition (Amendment and Validation) Act, 1967, the Government gave an assurance on the floor of both the Houses of Parliament that a Committee consisting of Members of Parliament and nominees of the State Governments would be appointed to examine the entire framework of the Land Acquisition Act, 1894 and its administration and to suggest improvements in its working. In pursuance thereof, we were appointed by virtue of the Resolution¹ No. 6-6/67-Gen.II, dated 27th July 1967, of the Government of India in the Ministry of Food, Agriculture, Community Development and Cooperation (Department of Agriculture)². Our terms of reference were:

To examine the scheme of acquisition of land for public purpose and companies in the public and private sectors under the Land Acquisition Act, 1894, with particular reference to :—

- (i) principles which should govern acquisition of land for a public purpose ;
- (ii) principles for determining compensation ;
- (iii) reasons for administrative delays and remedial measures ;
- (iv) extent of Government responsibility for rehabilitation of evicted families and recommendations about discharge of this responsibility ; and
- (v) feasibility of enacting a uniform Central law on 'land acquisition' which may be applicable to the whole country although 'land acquisition' is in the Concurrent List.

1.2. Though our headquarters were at New Delhi, we were empowered to visit such other places as we thought fit and hold our meetings at such other places as were considered necessary by us.

Completion of Preliminaries

1.3. We assembled for the first time in New Delhi on the 14th August, 1967 and had the benefit of listening to the inaugural address³ of Shri Annasaheb P. Shinde, Minister of State in the

Ministry of Food, Agriculture, Community Development and Cooperation. The Chairman also spoke⁴ on the stupendous nature of the task before us and emphasised that the members will have to look to the interests of the persons whose lands are acquired and also the State, representing the cumulative interests of the community, for whom land is acquired. These speeches provided the broad guidelines for our work.

Questionnaire

1.4. Our immediate task was to frame a comprehensive questionnaire. An elaborate questionnaire⁵ was drawn by us in view of the detailed nature of the enquiry, and the same was given a countrywide circulation. We invited comments and suggestions from all the State Governments, public organisations and individuals etc., interested in the matter.

1.5. Several State Governments, Corporations, Institutions and individuals responded to our invitation. We received 560 replies to the questionnaire and visited almost all the States and some of the Union Territories for examining a large number of witnesses representing the points of view of State Governments, individual officers, acquiring departments, local bodies, improvement trusts, panchayats and the like. Besides, Administrators of public as well as private sectors, industrial concerns, land owners, legal practitioners, town planners, other professionals and political parties were consulted. A list of persons who replied to the questionnaire is appended⁶.

1.6. The material received by us through replies to the questionnaire, or by way of oral testimony given before us was analysed in regard to the States of Tamil Nadu, Maharashtra, Gujarat, Andhra Pradesh, Mysore, Kerala, Rajasthan, Haryana, Punjab, Assam, Orissa and West Bengal. We considered a series of papers dealing with the various aspects of the law of compulsory acquisition as well as other factual data, which were helpful in understanding the background to the problem. A list of these papers is given in Appendix No. 7.

Recording of Evidence

1.7. A number of meetings were held by us for discussions and recording of the evidence of witnesses who came forward to give their views on the working of the Land Acquisition Act. We have recorded evidence on the spot in almost all the

¹. Appendix No. 1.

². The Composition of the Committee is given at the outset of this Report.

³. Appendix 2.

⁴. Appendix 3.

⁵. Appendix 4 & 5 for the Circular letter and the Questionnaire.

⁶. Appendix 6.

States and some of the Union Territories for the sake of the convenience of the local witnesses. We have invariably recorded the evidence of the Heads of the Departments of the State Governments closely associated with the problems of land acquisition. We also met persons in public life who included eminent lawyers, engineers, surveyors, principals, teachers, scholars etc. Our visits to various States also gave us an opportunity of making spot studies in several cases and thus helped us in acquainting ourselves with the problems faced by the dispossessed land owners, displaced persons and the acquiring authorities. A list of persons who tendered evidence before us as well as a list of places visited by us are appended⁷.

1.8. A list of State Ministers, M.L.As. and high officers of the Government, who gave evidence before us, is also separately given in Appendix No. 9.

Informational Basis

1.9. A review of the working of the Land Acquisition Act has become necessary in the context of a rapidly developing economy of our country. It is a matter of common knowledge that acquisition of large areas of land for setting up of various river valley projects, steel, heavy engineering, and chemical plants, town development schemes, etc., is being made ever since Independence. The Land Acquisition Act, 1894, was framed in an era when small pieces of lands were being acquired with a limited object. The Legislature in those days did not visualise large scale acquisition of land required for various multiple projects in a developing country. Some State Governments have amended the Central Land Acquisition Act, 1894, for meeting the growing requirements for their various development projects. The Governments of Kerala and Rajasthan have enacted self-contained land Acquisition Acts for application in their States, Land Acquisition being a Concurrent subject under our Constitution, we obtained information and relevant data from the State Governments and projects administrations about the problems involved in acquisition of land, completion of proceedings, payment of compensation and displacement caused by large scale acquisition of land.

Cooperation Received from States, Public and Press

1.10. Throughout our enquiry the State Government, officials of the undertakings in the public and private sectors and members of public having intimate knowledge of the working of the Land Acquisition Act were extremely cooperative. We received full cooperation at all places from all the State Governments. The press was equally helpful and provided adequate coverage to our programmes before we visited any State. The proceedings of the meetings, and discussions, received wide

publicity and evoked comments in important papers and journals. People everywhere showed a keen interest in our work.

1.11. A number of eminent persons, Ministers of States, senior Officers of the Ministries of Law and Defence, administrators, Jurists and active members of public life appeared before us on our invitations. We are extremely grateful to all of them for giving us their valuable time to enlighten us with their views.

1.12. The various constitutional and legal aspects of the problem of compulsory acquisition were very ably presented to us by Shri D. B. Kulkarni, the Member-Secretary of our Committee during his visit to the Committee. He spoke about the outstanding work⁸ done by him as well as through his papers⁹, material portions of which were read before reaching our decisions. The task of preparing the Report of our Committee primarily fell on him and the Report itself speaks about the outstanding work¹⁰ done by him. Shri P. C. Suri, Officer on Special Duty who was attached to our Committee also gave us his best assistance. Some temporary Law Officers were also associated for some time with our work and they also very satisfactorily performed the work which was entrusted to them¹¹.

1.13. We had a clause by clause discussion on the existing provisions of the Land Acquisition Act having regard to the recommendations of the Law Commission, the Reports of the Thacker Committee, and the Group of Experts, the evidence recorded by us, and replies received in response to our questionnaire. We also took into consideration the administrative difficulties brought to our notice by the officers of the several States before reaching our conclusions.

Scheme of the Report

1.14. A glance at the contents of this Report will disclose the scheme of our Report. We have discussed the five specific terms of reference serially. We have first discussed the principles of acquisition of land for a public purpose, and then acquisition for companies in the public and private sectors. In framing our recommendations, the constitutional requirements for acquisition had to be kept in view. We have, therefore, discussed them at length and have also given a broad outline of our approach to the problem of land acquisition in Chapter 4. Chapter 5 deals with principles for determining compensation, while forum and procedure for determining compensation, forms the subject matter of Chapter 6. Procedural Delays and Remedies therefor, Special Powers in cases of Urgency/Emergency, Extent of Government responsibility for rehabilitation of evicted families etc. and Betterment Levy are discussed in Chapter 6 to

⁷. See Appendices 8, 9 and 10.

⁸. Appendix No. 7—List (A)—Constitutional and Legal background papers.

⁹A. The Land Acquisition Review Committee passed unanimously a Resolution placing on records its warm appreciation of the outstanding work done by the Member-Secretary. The text of this Resolution is given in Appendix 14.

¹⁰See Appendix 13 for the Secretariat of the Committee.

10 respectively. The feasibility of enacting a uniform central law on land acquisition forms the subject matter of Chapter 11. Our recommendations on other matters for improvement in the Land Acquisition Act, will be found in Chapter 12. The documents to which reference has been made in the Report are classified under two heads viz., Annexures and Appendices. The relevant Annexures are given at the end of the Chapter in which a reference thereto has been made. The Appendices which are 12 in number are given at the end of the Report.

1.15. While arriving at the conclusions on each of the terms of reference, we have kept in view the basic principle that our recommendations should conform to the goal of a socialistic pattern of society set up by our Constitution. The basic principle adopted by us is that law should not im-

pede the needs of the community as represented by the Government and in achieving this objective it should also not be unnecessarily harsh to the land-holders or persons interested in the land, who are adversely affected by the process of compulsory acquisition. We have attempted to arrive at a rational synthesis of the conflicting interests of the State and the individual. Moreover, while reviewing the Land Acquisition Act, we have also kept in view the rapidly developing economy of our country and the resultant need for early completion of acquisition proceedings for meeting the requirements for speedily implementing big projects including town planning schemes. It is our earnest hope that our recommendations if implemented, will go a long way in streamlining the Law of Land Acquisition, ensure elimination of long delays in completion of acquisition proceedings and at the same time give a fair deal both to the Land owners and the State.



CHAPTER 1
PRINCIPLES WHICH SHOULD GOVERN ACQUISITION
OF LAND FOR A PUBLIC PURPOSE



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CHAPTER 2

Principles which should govern Acquisition of Land for a Public purpose

The first term of reference requires us *inter alia* to review the principles which should govern acquisition of land for a public purpose. The Land Acquisition Act, 1894, contains no exhaustive definition of public purpose. Moreover, it makes the executive determination of the existence of a public purpose final and non-justiciable. It has been urged before us that the absence of a precise definition of public purpose and the non-justiciability of the issue as to the existence of a public purpose give a handle to the acquiring authorities to abuse the provisions of the Act. Another common grievance brought to our notice is that very often a taking of more land than is required by present necessities is made with the result that the superfluous land is appropriated to a purpose other than the one for which it was acquired. The issues which therefore, arise for our consideration are as under:—

- (I) Whether an exhaustive definition of 'public purpose' should be given in the Land Acquisition Act;
- (II) Whether the existence of public purpose should be made justiciable;
- (III) Whether use of land for any public purpose other than the one for which its possession was taken should be permitted, or whether, in the alternative, the land should be made available to the original owner or his heirs in case the same is not used for the purpose for which it was acquired.

We proceed to consider these issues in the light of the existing position of the law relating to compulsory acquisition of property by the State.

I. Whether an exhaustive definition of 'public purpose' should be given in the Land Acquisition Act

Power of Compulsory Acquisition by the State

2.1. It is a right inherent in every sovereign to take and appropriate property belonging to individual citizens for public use. This right, which is described as eminent domain in American Law, is like the power of taxation, an offspring of political

necessity, and it is supposed to be based upon an implied reservation by Government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner¹. In the Fifth Amendment to the Constitution of the United States the fact is recognized that in some cases the necessities of the Government must override the rights of private ownership, and compel the surrender of specific private property to the public use.

Public purpose a condition precedent

2.2. The Land Acquisition Act, 1894, which is pre-Constitution law contemplates acquisition for a public purpose and for a Company. The expression 'public purpose' occurs in Sections 4(1), 6(1), 17(1), 35(1) and 40(1)(aa) of the said Act. Under Article 31(2) of the Constitution, the existence of a public purpose is a condition precedent to the exercise of the power of compulsory acquisition by the State. The State has no power to compulsorily acquire or requisition private property for private purposes, that is to say, to take the property of 'A' to be given to 'B', where there is no scheme of public utility involved.² The position in the U.S.A. is the same.³

Whether public purpose should be defined

2.3. The expression 'public purpose' is not defined in the Constitution. The inclusive definition of 'public purpose' in Section 3(f) of the Land Acquisition Act, not being compendious, is not useful in ascertaining the ambit of that expression. While the majority of the State Governments are not in favour of giving an exhaustive definition of public purpose, it has been suggested by some persons that the expression should be defined precisely in the Land Acquisition Act. In support of the demand for a precise definition, it was urged that the State Governments at present do not have the same objectivity of approach as existed in the good old days when the Land Acquisition Act was sparingly used. Nor have they, it is pointed out, sufficient time to determine correctly whether the purpose in view is in fact a public purpose. It was apprehended that the power to acquire the land would

¹ Chiranjit Lal Chowdhury v. Union of India, A.I.R. 1951, S.C. 41, 53-54 (Per Mukherjea, J.).

² Kochuni v. State of Madras—A.I.R. 1960, S.C. 1080. See also Godrej & Boyce Manufacturing Co. Private Ltd. v. the Special Tehsildar, Land Acquisition, (1968) 2 M.L.J. 273.

³ In its Treatise on Constitutional Limitations (7th Ed.) pp. 756-75, Cooley observes as follows :—

"The definition given of the right of eminent domain implies that the purpose for which it may be exercised must not be a mere private purpose; and it is conceded in all hands that the legislature has no power, in any case, to take the property of one individual and pass it over to another without reference to some use to which it is to be applied for the public benefit. The right of eminent... does not imply a right in the sovereign power to take the property of one citizen and transfer it to another, even for a full compensation where the public interest will be in no way promoted by such transfer.

be abused in the name of public purpose if no precise definition of that term was given in the statute.

2.4. The first question which arises for determination by us is whether it is feasible to give a precise definition of public purpose. We find that no satisfactory definition of the term 'public purpose' has been achieved by the courts.

Test of Public purpose as laid down by courts

2.5. The expression 'public purpose' has been considered by the courts in several cases. The leading case on 'Public Purpose' is that of *Hamabai Framjee Petit vs. Secretary of State for India*.⁴ In that case the Judicial Committee of the Privy Council had to consider the meaning of the words 'public purpose' occurring in a lease of the 19th century. Even in 1914 the Judicial Committee did not think it fit to attempt a precise definition of the expression 'public purpose' and was content to cite with approval the following passage from the Judgment of Batchelor J:—

"General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purpose' in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

2.6. *Hamabai Framjee Petit's* case has been repeatedly followed by the Supreme Court. In *State of Bihar vs. Kameshwar Singh*,⁵ Das J. (as he then was) quoted it with approval and observed that no hard and fast definition can be laid down as to what is a public purpose as the concept has been rapidly changing in all countries of the world. According to Das J. it is the presence of general interest of the community in an object or an aim that transforms such object or aim into a public purpose, and whatever furthers the general interest of the community as opposed to the particular interest of the individual must be regarded as a public purpose. In this context, the following observations of Das J., in the above mentioned case are worth noting:—

"With the onward march of civilization our notions as to the scope of general interest of the community are fast changing and widening with the result that our old and narrower notions as to the sanctity of the private interest of the individual can no longer stem the for-

ward flowing tide of the time and must necessarily give way to the broader notions of the general interest of the community. The emphasis is unmistakably shifting from the individual to the community. This modern trend in the social and political philosophy is well reflected and given expression to in our Constitution.... The ideal we have set before us in Article 38 is to evolve a State which must constantly strive to promote the welfare of the people by securing and making as effectively as it may be a social order in which social, economic and political justice shall inform all the institutions of the national life. Under Article 39, the State is enjoined to direct its policy towards securing, *inter alia*, that the ownership and control of the material resources of the community are so distributed as to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The words 'public purpose' used in Article 31(2) indicate that the Constitution uses those words in a very large sense. In the never ending race, the law must keep pace with the realities of the social and political evolution of the country as reflected in the Constitution. If, therefore, the State is to give effect to these avowed purposes of our Constitution we must regard as a public purpose all that will be calculated to promote the welfare of the people as envisaged in these Directive Principles of State Policy, whatever else that expression may mean."

2.7. Mahajan J. (as he then was) also pointed out in the same case that the phrase 'public purpose' has to be construed according to the spirit of the times in which the particular legislation is enacted and so construed, acquisition of estates for the purpose of preventing the concentration of huge blocks of land in the hands of a few individuals and to do away with intermediaries is for a public purpose.

Instances of public purpose—INDIA

2.8. An analysis of a series of decisions of the Courts reveals that the test of the public purpose applied by the courts is whether the general interests of the community as opposed to the particular interests of individuals was directly and vitally concerned in the given case of acquisition or requisition. Applying this test, the purposes which have been upheld are broadly as under:—

- (1) Establishment of a new Capital for the State (i.e. the construction of Gandhi Nagar, the new capital of Gujarat).⁷

⁴. (1915) L.R.—42 I.A. 444.

⁵. 1952 SCP 889 (995).

⁶. 1952 A.I.R. 889 (pp. 996-997).

⁷. *Ishwarlal v. State of Gujarat*—I.L.R. 1967 Guj.—page 620.

- (2) Establishment of a timber market outside the city according to planned development by Municipal Corporation.⁸
- (3) Rehabilitation of thousands of displaced persons;
- (4) Construction of houses by Cooperative Societies under special schemes.
- (5) The housing of a Minister; public officer; an employee of the State Road Transport Corporation or even an industrial company; a member of a foreign Consulate; poor people living in a slum area; or the general public in a condition of acute shortage of accommodation, e.g., owing to the influx of refugees; or the members of a cooperative society.
- (6) Doing away with unemployment amongst a section of the community.
- (7) A scheme of land reforms, even though it may ultimately benefit a class of tenants.
- (8) Construction of works for a company for production of textile machinery parts.⁹
- (9) Acquisition of land for a factory for manufacturing refrigeration equipment which is useful for preservation of a large surplus of fruit and dairy products in the State like the Punjab.¹⁰
- (10) Acquisition of land for micro-wave project.¹¹
- (11) Rehabilitation of the persons displaced by the acquisition made for a project.¹²
- (12) Acquisition of land in municipal area for erecting a memorial to Mahatma Gandhi.¹³

Instances of public purpose—U.S.A.

2.9. The public uses which have been upheld by the courts in the U.S.A. are broadly categorised as under:

Public buildings, public health and safety; military purposes; slum clearance, urban development

and low cost housing; sewage disposal; sewerage system and sewers; drainage, swamplands, highways and streets; charter of way as depending upon right of public to use it; offstreet parking, bridges and toll bridges; urban transportation; railroads, warehouses and grain elevators, navigation and watercourses; wharves, docks and piers; canals; pipelines light, heat and power; gas and electricity; telegraph; telephone and television; public water supply, public parks, squares, playgrounds and forest preserves; educational, religious and social purposes; libraries; preservation of historical sites, monuments; fisheries; flood control, levees; irrigation; mines and mining, cemeteries; control of the use, improvement or appearance of property; and acquisition of property to exchange or compensate for the other taken for public use.¹⁴

Distinction between public purpose and private purpose

2.10. The expression 'public purpose' in the Land Acquisition Act has been used in a generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited.¹⁵ The public nature of the project is not dependent upon the number of people to be served or the smallness or largeness of the community to be benefited. It may be limited to the inhabitants of a small locality but the benefit must be common. However, the purpose must be by or for the Government, the general public or some portion thereof and not for by or for the particular individuals or estates. The public purpose is not defeated if a private use or benefit incidentally results. The position in this respect is the same in the United States¹⁶ as well as in India.¹⁷

2.11. It is frequently objected that under the Development Statutes, the acquired land is turned over to private interests for development and it is

⁸ A.I.R. 1968—Mysore—127—G. Virasangayya v. State.

⁹ R. L. Arora v. State of U.P., A.I.R. 1964, S.C. 1230.

¹⁰ Somawanti v. State of Punjab, A.I.R. 1963, S.C. 151(170).

¹¹ Maira Silvia Pufina Clarisse Rebeiroe Miranda v. Union of India, A. I. R. 1968 Goa 91.

¹² Muhammad—Qamar v. State of Bihar, A.I.R. 1966 Pat. 420.

¹³ F.M. Chinai v. State of Gujarat. In this case, the State authorities had issued a notification for land acquisition after the Ahmedabad Municipal Corporation adopted a resolution in 1959, urging the Government to acquire certain land within the Municipal limits for a Gandhi Memorial. Mr. Chinai had submitted to the High Court that building a samadhi for the Mahatma could not be considered a public purpose under the Land Acquisition Act. He also contended that the Deputy Commissioner had not applied his mind while issuing the notice for land acquisition, but had issued it on "sentimental grounds." The High Court, however, dismissed the petition. The Supreme Court confirm this decision and dismissed the appeal by its Judgment dated 17th October, 1969.

¹⁴ See 26 American Jurisprudence 2d—Eminent Domain SS. 40-72.

¹⁵ Babu Barkya Thakur v. State of Bombay (1961) 1 SCR 128 : (AIR 1960 SC 1203). The decision of the Privy Council in Hamabai Framji Petit v. Secretary of State (AIR 1914 PC 20), which is the basis of all subsequent decisions of the court in India lays down *inter-alia* that it is not necessary in order that there should be a public purpose that the land which is taken must always be made available to the public at large. It may be that it may benefit only a small section of the Community.

¹⁶ *Ibid* S. 32. Joshir. Mfg. Co. v. Providence, 262 US 668. Hendersonville Light & Power Co. v. Blue Ridge Interurban R. Co. 243 U.S. 563. This rule has been applied in respect of incidental benefit from surplus power or water developed in a taking for public use; from the protection and development of a reservoir; from parks; offstreet parking, or slum clearance and urban redevelopment; from the opening, relocation, or change of grade of a high way; from irrigation projects; from harbour or port improvements; from the drainage or wet and overflowed lands; and from gasoline extracted from gas.

¹⁷ Jhandulal v. State of Punjab, A.I.R. 1961, S.C. 343(346), and Arnold Rodrigues v. State of Maharashtra, A.I.R. 1966, S.C. 1788.

not a public purpose. With few exceptions, redevelopment Acts in the United States have been upheld against this objection because the public purpose is legitimately served by the legislative object of slum and blighted area clearance and the private benefit is only incidental.¹⁸

2.12. Similar view has been taken by our Supreme Court in *Arnold Rodrigues v. State of Maharashtra*.¹⁹ In this case, the State of Maharashtra had acquired the lands of the petitioners in Greater Bombay for development and utilisation of the said lands as industrial and residential area. It was contended that the intended acquisition was not for a public purpose and was intended for sale to private persons, limited companies and corporations for monetary gain, as the acquisition was made with the object of subsequent disposal of the land by lease, assignment or sale, though with the object of securing further development. While negating this contention, the Supreme Court pointed out that the public purpose varies with the times and the prevailing conditions in localities, and in some towns like Bombay the conditions are such that it is imperative that the State should do all it can to increase the availability of residential and industrial sites. It is true that these residential and industrial sites will be ultimately allotted to members of the public and they would get individual benefit, but it is in the interest of the general community that these members of the public should be able to have sites to put up residential houses and sites to put up factories. The main idea in issuing the impugned notifications was not to think of the private comfort or advantage of the members of the public but the general public good.²⁰ The Court observed that the welfare of a large proportion of persons living in Bombay is a matter of public concern and the notifications served to enhance the welfare of this section of the community and this is public purpose.²¹

2.13. Where the dominating purpose or use is, however, private, the mere fact that a public use or benefit is incidentally derived will not justify the exercise of eminent domain because the property of an individual cannot, without his consent, be so devoted to the private use of another. It has been so held both in America²² and India.²³

2.14. The line of distinction between the purposes that are to be deemed public, and those which cannot be, is thus fairly accurately drawn by the courts. The cases cited above are only illustrative but they do throw a flood of light upon the principles applied by the courts in distinguishing a public purpose from a private purpose. We think that the absence of a precise definition of public purpose in the Land Acquisition Act is not likely to cause any injustice to the persons affected by acquisition as the guidelines laid down by the courts for determining whether or not the acquisition is for a public purpose are sound.

Public purpose not defined precisely by American Courts

2.15. The expression "public use" which is used in the 5th Amendment of the American Constitution is of a more limited import than the expression "public purpose" used in our Constitution. No satisfactory definition of public use has ever been achieved by the American Courts and the notion as to what is public use is rapidly changing in America. It is stated in the *Corpus Juris* that no general definition of what degrees of public good will meet the constitutional requirement for a 'public use' can be framed as it is in every case a question of public policy.²⁴ The term public use is thus elastic and keeps pace with changing conditions.

Public purpose definition Australia

2.16. In Australia, the position is different. In section 5 of the Australian Land Acquisition Act, 1906-1934, public purpose has been defined as follows:—

"Public purpose" means any purpose in respect of which the Parliament has power to make laws, but shall not include the acquisition of territory for the Seat of Government of the Commonwealth under the Constitution.

The Commonwealth Parliament is empowered by section 51 of the Australian Constitution to make laws with reference to the acquisition of property on just terms for any State or person for any purpose in respect of which the Parliament has power to make laws. The Commonwealth has exercised its power of legislation under Section 51 *inter alia*

¹⁸. *Berman v. Parker*, 348 US 26, 99 Led 27; *Redevelopment Agency of San Francisco v. Hayes*, 122 Cal App 2d 777a Cert den 348 US 897, 99 Led 705.

¹⁹. A.I.R. 1966 S.C. 1788.

²⁰. In *Jandulal v. State of Punjab*, AIR 1961, SC 343, an acquisition of building site for residential houses for industrial labourers was held to be for a public purpose, though the structures to be made on the land would have benefited the members of the cooperative society. While upholding the acquisition, the Court pointed out that the private benefit of a large number of industrial workers becomes public benefit within the meaning of the Land Acquisition Act.

²¹. In the earlier case of *Babu Barkya Thakur v. State of Bombay*, A.I.R. 1960, S.C. 1203, the Supreme Court had pointed out that where a large section of the community is concerned, its welfare is a matter of public concern.

²². 26 American Jurisprudence 2d—Eminent Domain. S. 33 *New York City Housing Authority v. Muller* 270 NY 333 I.N.F. 2d 153.

²³. *Godrej & Boyce Mfg. Co. Private Ltd. v. the Special Tehsildar, Land Acquisition* (1968) 2 M.L.J. (273) where it was held that the acquisition of the petitioner's lands for the purpose of allotting them to various applicants to start industries when the petitioners-company itself had purchased the lands for developing or expanding their business activities in the south cannot be called acquisition for a public purpose.

²⁴. *Corpus Juris Secundum*, Vol. XX, Article 39, PP. 552-553.

by the said Land Acquisition Act, and the definition of public purpose in the Act is in consonance with the provisions of the Australian Constitution. Under our Constitution, the term "public purpose" has not been defined and no limitations have been put upon the scope of the expression, as has been done under the Australian Constitution. Acquisition may be made not only for a Union purpose or a State purpose (which it is needless to say is a public purpose)²⁶ but also for any other public purpose. There may be cases where the purpose of acquisition or requisition is neither for the Union purpose nor for the State purpose and yet it may be for a public purpose. The expression 'public purpose' is much wider in its import than a Union purpose or a State purpose. The narrow definition of public purpose in the Australian Land Acquisition Act is thus of little assistance to us in an attempt to give a comprehensive definition of that expression consistently with the requirement of our Constitution.

Feasibility of definition of public purpose—view of our Supreme Court

2.17. In *State of Bombay vs. R. S. Nanji*²⁷ the Supreme Court observed that an examination of its previous decisions led it to the conclusion that it was impossible to precisely define the expression "public purpose". In each case, all the facts and circumstances would require to be closely examined in order to determine whether a public purpose has been established.

Views of the Law Commission

2.18. In its 10th Report²⁸ on the Law of Acquisition and Requisitioning of Land, the Law Commission of India has expressed the view that it is neither possible nor expedient to attempt an exhaustive definition of public purpose. All that can therefore be attempted in a legislation of this kind is to provide an inclusive definition so as to endow it with sufficient elasticity to enable the Courts to interpret the meaning of public purpose according to the needs of the situation and this is what has been attempted by the Law Commission in their definition of that expression in the draft of the Acquisition and Requisitioning of Land Act. This Report was made in 1958. However, even the later decisions of the Supreme Court have endorsed the view that it is not possible to lay down any hard and fast definition of public purpose. In *Soniwanti v. State of Punjab*²⁹ the Supreme Court has observed that it would not be a practical proposition even to attempt a comprehensive definition of public purpose which is bound to vary with the times and the prevailing conditions in a given locality. This view was also reiterated in the latest case of *Arnold Rodrigues v. State of Maharashtra*.³⁰

Views of American Jurists

2.19. The American courts have also repeatedly and wisely refused to define 'public use' and for

cogent reasons. As pointed out by Alfred D. Jahr in his work on Eminent Domain, any definition would be unworkable, limited and circumscribed. In this context, the following observations of the said Jurists are worth noting:—

"What may become a 'public use' in the future cannot be foretold by mortal man. All we can do is to venture a prediction, as certain as day follows night, that there will be many public uses in the future that we never dreamed of at the present time."³¹

Our view.

2.20. We agree that it is not possible to lay down any hard and fast definition of 'public purpose' which would meet the needs of the present and the future in a rapidly changing world. The majority of the State Governments have also endorsed this view and are opposed to the framing of an exhaustive definition of the said expression. The purposes for which the right of acquisition may be exercised must be determined by the needs of the Government.

2.21. Legislatures of some States (i.e. Maharashtra, Gujarat, U.P., Mysore, Bihar, M.P. and Rajasthan) have amended the definition of public purpose by including within its scope specific purposes such as development of areas and subsequent disposal thereof with the object of securing further development, housing schemes for the purpose of increasing accommodation for housing persons, the provision of land for clearing slum areas or relieving congestion, etc. Extracts of the inclusive definitions of public purpose as given in the Central and the State Acts as well as the draft Bill of the Law Commission are annexed together with a tabular statement indicating the clauses of the definition of the Commission which have been adopted in the State Acts.

Our Recommendations.

2.22. We have considered the typical cases of acquisition for public purposes upheld by the Courts, as well as the inclusive definitions of public purpose given in the aforesaid State Acts and in the draft Bill of the Law Commission; and are of the opinion that only an inclusive definition of public purpose should be given in the Land Acquisition Act. This definition should be on the following lines:—

"The expression public purpose includes—

- (i) The provision of village sites, or the extension, planned development, or improvement of existing village sites.
- (ii) The provision of land for town planning under any law relating to such planning.
- (iii) The provision of land for planned development within reasonable time from public funds and subsequent disposal thereof in whole or in part by lease, assignment or

²⁶. *The State of Bombay v. R. S. Nanji*, 1956 S. C. R. 18 (25).

²⁷. (1956) S.C.R. 18.

²⁸. Para 38, Page 18 of the Report.

²⁹. A.I.R. 1963 (S.C. 161).

³⁰. A.L.R. 1966 S.C. 1788.

³¹. Alfred D. Jahr on Eminent Domain—Page 25.

outright sale with the object of securing within reasonable time, further development as planned.

(iv) The provision of land—

- (a) for carrying out any housing scheme or health scheme sponsored by the appropriate Government or a local authority; or
- (b) for clearing slum areas; or
- (c) for relieving acute congestion; or
- (d) for housing the poor, landless, or displaced persons, or persons residing in areas affected by natural calamities.
- (e) for housing the weaker sections of the people who are educationally and economically backward and, in particular, the scheduled castes and the scheduled tribes of the same category.

(v) The provision of—

- (a) residence for any person holding an office of profit under the appropriate Government or accredited as a diplomatic Consular or trade representative of a foreign Government.
- (b) Premises or a building for locating a public office.

(vi) The provision of land for corporations owned by the State or for Government companies.

(vii) The provision of land for any local authority and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing within a reasonable time further development.

(viii) The provision of land for any charitable trust or a society wholly devoted to charitable purposes open to all sections of the people and registered under the Societies Registration Act, 1860.

Explanation I.—The question “what is reasonable time” is, in each particular case, a question of fact and circumstances.

Explanation II.—The expression “Government Company” will have the same meaning in this clause as is assigned to the same under the Companies’ Act, 1956.³¹

Explanation III.—“Charitable trust” includes a trust established or to be established for the relief of the poor, education, medical relief or advancement of any other object of general public utility.”

2.23. The purposes mentioned in the above definition are, no doubt, public purposes, and some of them have been upheld by the courts in the cases mentioned earlier.

2.24. It will be noticed that some of the purposes incorporated in the State Amendments to the Land Acquisition Act have been adopted in our definition. While doing so, we have also made some modifications. For example, under clauses (iii) and (vii) of our definition, provision of land for planned development and subsequent disposal thereof, and provision of land for any local authority and subsequent disposal thereof with the object of securing further development would be considered to be public purposes *provided the development in question is carried out within reasonable time*. The restriction as to ‘reasonable time’ does not find a place in the State Amendments of Maharashtra, Gujarat, Mysore and Bihar, though planned development constitutes a public purpose thereunder. We feel that a restriction of this kind is necessary for safeguarding the interest of the individual against the State.

What should not constitute a public purpose

2.25. Though the expression ‘public purpose’ is not capable of a precise definition, we thought that it would be possible to specify cases in which acquisition should not be considered as being for a public purpose. In our view, some restrictions on acquisition of land should be imposed in certain cases. With this object in view, the proposal to include the following provision in the Land Acquisition Act was considered :—

“Unless compelling circumstances (to be stated in writing) exist, which render it necessary so to do, no proceedings for acquisition shall be taken in respect of any land or building—

- (a) which has been acquired by the appropriate Government for a public purpose under this Act or any other law relating to acquisition and has been or is being put to use for the said purpose; or
- (b) which is already being used by a person or body of persons for a housing scheme or industry and the public purpose for which it is being acquired is the same; provided that—

(i) the person or body of persons is willing to accept such conditions and specifications as may reasonably be imposed in this behalf by the appropriate Government.

(ii) the person or body of persons is willing to furnish the necessary financial guarantees as may be required of him regarding the due execution of the housing scheme or industry, as the case may be.”

2.26. On a careful consideration, we think that the provisions in Clause (a) only should be incorporated in the Act. The provisions in Clause (b) are not recommended because we feel the incorporation of such provisions may put obstacles in the way of planned development and result in speculation in transactions relating to land and in unearned income. However, we recommend that

³¹ The definition of Government Company occurs in Section 617 of the Companies Act, 1956, which runs as follows :—

For the purposes of (this Act) Government Company means any Company in which not less than fifty-one per cent of the (paid up share capital) is held by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments (and includes a company which is a subsidiary of a Government company as thus defined).

some way should be found out by Government to protect the interests of the genuine land-owners or cooperative societies who are using or intending to use the land for a housing scheme or industry consistent with the proposed planned development.

II. Whether the existence of public purpose should be made justiciable

2.27. Another ancillary question which falls to be determined by us is whether the existence of public purpose should be made justiciable by amending the provisions of Section 6 of the Land Acquisition Act suitably. One of the suggestions received by us is that it should be made justiciable. In the United States, the question as to what is a public purpose is justiciable.²² With regard to the jurisdiction of the courts to determine whether a purpose is a public purpose, the existing position of the law in India is as follows :—

2.28. Any law in India passed after the commencement of the Constitution would be unconstitutional if it seeks to make the executive determination of the existence of a public purpose final and non-justiciable. In *State of West Bengal v. Bela Banerjee*,²³ the Supreme Court observed that the existence of public purpose as a fact must be established objectively in as much as Article 31(2) of the Constitution made the existence of such purpose a necessary condition of acquisition. It is, therefore, ultimately for the courts to determine if the power conferred for the exercise thereof is for a public purpose. But different considerations arise with regard to existing laws, i.e., the laws in force at the commencement of the Constitution. Clause 5(a) of Article 31 declares that "nothing in clause (2) shall affect (a) the provisions of any existing law". Article 31(2) is not attracted in the case of the Land Acquisition Act, 1894, which is an existing law.

2.29. After a notification under sub-s. (1) of S. 4 of the Land Acquisition Act is published, a person interested in the land is entitled to object to the acquisition. That objection may be raised on any ground as for instance that the land is not in fact needed at all for any purpose or that it is not suitable for the purpose for which it is sought to be acquired or that the purpose is not a public purpose or what is said to be a company is not a company and so on. Finality is attached to the decision of the Government which ultimately has to decide such objections. Then follows Section 6 which enables the Government to make a declaration provided it is satisfied that a particular land is needed for a public purpose or for a company. Section 6(3) provides that the declaration made under section 6(1) and published in the

Official Gazette under Section 6(2) shall be conclusive evidence that the land is needed for a public purpose. The Act being a pre-Constitution law is protected from the operation of Article 31(2) by the provisions of Article 31(5)(a). In *Somawanti v. State of Punjab*, AIR of 1963, SC 151, the Supreme Court held that the conclusiveness or finality attached to the declaration is not only as regards the fact that the land is needed "but also as regards the question that the purpose for which the land is needed is, in fact, a public purpose."

2.30. Mudholkar, J. in delivering the Judgment was, however, careful to add :—

"Whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired is within the legislative competence of the State, the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside, for the moment, the purpose of a company. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception, the declaration of the Government will be final."²⁴

His Lordship further observed :—

"Though we are of the opinion that the courts are not entitled to go behind the declaration of the Government to the effect that a particular purpose for which the land is being acquired is public purpose we must emphasise that the declaration of the Government must be relatable to a public purpose as distinct from a purely private purpose. If the purpose for which the acquisition is being made is not relatable to public purpose then a question may well arise whether in making the declaration there has been on the part of the Government a fraud on the power conferred upon it by the Act. In other words, the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open

²² In the course of one of his Tagore Law Lectures delivered in the University of Calcutta in July, 1955, Mr. Justice Douglas of the United States Supreme Court stated : "In India as in America, the question whether the taking is for a public purpose is a justiciable question." (See William O. Douglas, *From Marshall to Mukherjee*, Studies in American and Indian Constitutional Law, Eastern Law House, Calcutta, 1956 p. 222).

²³ A.I.R. 1954 S.C. 170 (at p. 172).

²⁴ A.I.R. 1963 S.C. 151 (164).

to challenge at the instance of the party aggrieved. To such a declaration the protection of section 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable, provisions such as Section 6(3) notwithstanding”

Our Recommendation

2.31. The declaration of the Government as regards the existence of a public purpose is thus final except in cases involving fraud or colourable exercise of the power. The existing law places serious restrictions on the right of a person to challenge the acquisition of his land on the ground of absence of a public purpose. While public purpose is justiciable in respect of any acquisition made under any post-Constitution Act,” such is not the position with regard to the acquisitions made under the Land Acquisition Act, 1894, because it is a pre-Constitution law, protected from challenge by a specific provision in the Constitution. This leads to an anomalous position; and, in our view, there seems to be little justification for continuing the existing provisions of Section 6(3) of the Land Acquisition Act, which makes Government the sole judges to decide whether the purpose of acquisition is a public purpose. *Prima facie*, Government at best can only be presumed to be good judges to decide whether the purpose of acquisition was a purpose in which the general interest of the community was concerned, but to make them absolute judges, as envisaged by Section 6(3), is to deny to the person, whose property is taken without his consent, a valuable right of insisting upon an objective proof of the existence of a public purpose. It will also amount to closing our eyes to the existing state of affairs for evidence has been placed before us that the representatives of the Government have not been as careful and restrained in interpreting the term ‘Public Purpose’ as they should have been and this has occurred not too infrequently. We feel that it should ultimately be left to the courts to determine whether the power conferred for acquisition is being exercised properly for a public purpose. ‘Public purpose’ should, therefore, be made justiciable by amending the provisions of Section 6 of the Act suitably. Such a provision would, in our opinion, go a long way in removing the apprehension of the public as regards the possible abuse of power in the name of public purpose.

III. Whether use of land for any public purpose other than the one for which its possession was taken should be permitted, or whether, in the alternative, the land should be made available to the original owner or his heirs in case the same is not used for the purpose for which it was acquired.

2.32. It is always open to the State to fix priorities amongst public utilities of different kinds,

bearing in mind the needs of the State, the existing facilities and other relevant factors. A land which is already being used by the owner for one public purpose can therefore be acquired by the State for another public purpose.” It is for the State Government to say which particular industry may be regarded as beneficial to the public and to decide that its establishment would serve a public purpose.”

2.33. The authority exercising the power of compulsory acquisition has a large discretion as to the quantum of land to be acquired. Very often a taking of land more than is required by present necessities is made, keeping in view the future expansion. It has been urged before us that the land should be made available to the original owner if he so desires in case the same is not used for the purpose for which it was acquired.

Use of Land for other purpose—S. 16 of the Land Acquisition Act

2.34. Section 16 of the Land Acquisition Act provides that when the Collector makes an award and takes possession of the land, the land vests absolutely in the Government free from all encumbrances. Land of which possession is taken in cases of urgencies and emergencies under S. 17(1) and 17(2) respectively also vests absolutely in the Government free from all encumbrances though no such award has been made by the Collector. The effect of passing absolute title to the Government under Section 16 or Section 17 is that Government holds all the rights of the proprietors in the land and may use it for any purpose, whatsoever. In *Luchmeshwar Singh v. Darbhanga Municipality*,” the Calcutta High Court held that the Municipality was justified in using the land for any purpose for which the Statute authorised its use, although not the purpose for which it was professedly taken, it having been taken for a Bathing Ghat, but afterwards in part, used for a market.

Position in Gujarat

2.35. Use of land for any public purpose other than that for which its possession was taken has specifically been permitted in the State of Gujarat under Section 17(A) inserted in the principal Act by the Land Acquisition (Gujarat Unification & Amendment) Act, 1963. This section runs as follows :—

“When any land vests in the State Government or in a corporation owned or controlled by the State Government under the provisions of this Act, it shall be lawful, with the previous sanction of the State Government, to use such land also for any public purpose other than that for which its possession was taken.”

” A.I.R. 1963, S.C. 151 (165-166).

” For example, the Land Acquisition Act in force in Rajasthan, Kerala and Mysore. viz. the Rajasthan Land Acquisition Act, 1953; the Kerala Land Acquisition Act, 1961 and the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

” A. Hussain Tayabali v. State of Gujarat, A.I.R. 1968, S.C. 432.

” Somawanti v. State of Punjab, A. I. R. 1963, S.C. 151(170).

” I.L.R. 18, Cal. 99(10).

**Appropriation of superfluous land to other purposes—
—Position in U.S.A.**

2.36. In the U.S.A., one of the fundamental principles of the Law of Eminent Domain is that land taken for a public use shall be devoted to that use within a reasonable time, and this condition to the taking will be implied even though the authorising statute is silent on the subject.⁴⁰ It follows that a failure to devote property taken by eminent domain to any public use whatever may amount to an abandonment thereof.

2.37. The question as to the extent of the interest acquired by condemnation proceedings has an important bearing on the effect of the cessation of the use for which the property was taken. Thus when only an easement has been acquired for the public use by condemnation, if the use for which the land was taken is formally discontinued, permanently abandoned in fact, or becomes impossible, or the land is devoted to a different and inconsistent use, the easement expires and the owner of the fee holds the land free from encumbrance. In any such event the right to possession does not remain in the condemning party, but reverts to the owner of the fee.⁴¹ It is generally agreed that where the interest acquired by a railroad under eminent domain proceedings is less than a fee simple absolute, the title to the land condemned reverts to the original owner, or his heirs or assigns, upon abandonment thereof for railroad uses.⁴²

2.38. On the other hand, where land has been acquired for the public use in fee simple⁴³ absolute by the exercise of the power of eminent domain, the former owners retain no rights in the land, and the public use may be abandoned or the land may be devoted to a different use without any impairment of the estate acquired or any reversion to the former owners.⁴⁴ If a condemnation proceeding passes the fee to the land condemned, there is, of course, no interest left in the original owner and, therefore, no reverter on nonuser or the cessation of the public use.⁴⁵

**Appropriation of superfluous land to other purposes—
—Position in U.K.**

2.39. There is no power to use land acquired under a statute for purposes other than those authorised by the statute except temporarily until the authorised purposes can be carried out and if the lands are no longer required for the authorised purposes they must be sold as superfluous lands⁴⁶ under Sections 127 to 132 of the Lands Clauses Act, 1845, if it is incorporated or should be sold under any other statutory power of disposal unless there is a statutory power to appropriate the land to other purposes. If there is no such power, the use for other purposes will be restrained.⁴⁷

2.40. The object of the provisions with respect to superfluous lands is to secure to the landowners from whom land is taken by compulsion a reversion, as nearly as the legislature can accomplish it, of all land which is not required for the undertaking.⁴⁸

2.41. The undertakers are required under the provisions of the Lands Clauses Acts to dispose absolutely of all superfluous land within the period prescribed in the special Act or if no period is prescribed within ten years after the expiration of the time limited in the special Act for the completion of work.⁴⁹ However, before the undertakers actually dispose of any superfluous lands either by sale or by applying them to some purpose not a purpose of the undertaking, they must, unless the lands are situated within a town or built upon or used for building purposes first offer to sell them to the person then entitled to the lands, if any, from which the same were originally severed.⁵⁰ This right of pre-emption arises whenever the undertakers decide that the lands are superfluous and proceed to dispose of them and it is not necessary that the prescribed period should have elapsed. If the person entitled refuses to purchase the lands,

⁴⁰. *Cleandaniel v. Conrad* (sup) 26 Del (3 Boyce) 549, 83A 1036, error dismd 235 US 712, 59 L ed 437 35S Ct 203 (holding that a statute is to the extent invalid if it exempts the condemning corporation from devoting the land to a public purpose indefinitely); *Rogers v. Knoxville*, 40 Tenn App 170, 289 SW 2d 868.

⁴¹. *Harris v. Elliott* (US) Pet 25, 9 L ed 333, *Barclay v. Howell* (US) 6 Pet 498, 8 L ed 477. An easement on land condemned for a public use does not revert to the free owner unless its use for the condemn purpose has become impossible, or so highly improbable as to be practically impossible. *Matlack v. Wichita* (Kan) 407 P2d 510 (court syllabus).

⁴². *Chicago & E.I.R. Co. v. Clapp*, 201 Ill 418, 66 NE 223; *Vandewater v. Chicago, R.I.&P.R. Co.* 170 Iowa 687, 153 NW 190; *Federal Farm Mortg. Corp. v. Smith*, 149 Kan 789, 89 P2d 838.

⁴³. In the United States, a fee simple is a pure inheritance in property, clear of qualification or condition and freely alienable (*Lett v. Wyckoff*, 1 Barb. N.Y. 575). "Fee" "signifieth inheritance" "and simple is added for that it is descendible to his heirs generally that is, simply, without restraint to the heirs of his body, or the like. . . . This word (simple) properly excludeth both conditions and limitations, that defeat or abridge the fee" (Co Litt. lb.). . . . (Strounds Judicial Dictionary (3rd Edn). Vol. 2, P. 1078).

⁴⁴. *McConihay v. Wright*, 121 US 201, 30 L ed 932, 7 S Ct 940; *United States v. 16 Parcels of Land* (CA8 Mo) 281 F2d 271 (Land acquired being fee for post office building).

⁴⁵. *McConihay v. Wright*, 121 US 201, 30 L ed 932, 7 S Ct 940; *Pfarr v. Union Electric Co.* (Mo) 389 SW2d 819 (holding that condemnation by a public utility of fee simple estopped landowners from claiming forfeiture of land and reverter to owners on failure of company to use land for purposes of electric power plant); *Brooklyn Park v. Armstrong*, 45 NY 234).

⁴⁶. Lands acquired under the provisions of the Special Act either compulsorily or by negotiations undertaken by virtue of the compulsory powers but subsequently found not to be required for the purposes of undertaking are described as superfluous lands in the Lands Clauses Consolidation Act, 1845, which casts an obligation on the undertakers to sell such lands.

⁴⁷. *Cripps—Compulsory Acquisition of Land—Para 3-361.*

⁴⁸. *Halsbury's Laws of England*, 3rd Edn. Vol. 10, Para 411 (P. 223).

⁴⁹. *Lands Clauses Consolidation Act*, 1845, Section 127.

⁵⁰. *Lands Clauses Consolidation Act*, 1845, Section 128.

or cannot after diligent inquiry be found, then the like offer must be made to the person or to the several persons whose lands immediately adjoin the lands so proposed to be sold, provided these persons are capable of entering into a contract for the purchase of the lands.⁴¹ The aforesaid right of pre-emption must be claimed within six weeks after the offer, and ceases, if not accepted within that time. The right of pre-emption may be released and if not released remains in force as an equitable interest only. The price of the land is required to be ascertained by arbitration, in the absence of agreement.⁴² Upon payment or tender of the purchase money so agreed or determined, the undertakers must convey such lands, and their receipt is a sufficient discharge.⁴³ If the undertakers make default in disposing of superfluous lands, the lands remaining unsold vest in, and become the property of the adjoining owners.⁴⁴

2.42. The above provisions are, however, of little practical importance in modern times when wide powers of sale, exchange or appropriation for other purposes of lands acquired, but not required for the purposes for which they were acquired, are given to most bodies having powers of compulsory purchase. Such powers of appropriation may be given by the Special Act and if it does so such an Act usually expressly excludes Sections 127 to 132 of the Act of 1845 and the obligation to sell thereunder; or the Special Act may exclude those Sections by implications from the power of appropriation.⁴⁵

Our Recommendation

2.43. We have considered the provisions of the law regarding appropriation of superfluous lands to other purposes as obtaining in the U.S.A., the U.K. and our country and are of the view that Government may, within reasonable time, use the land for

any other public purpose though acquired for a different public purpose, if it does not violate the directive contained in clause (a) of para 2.5. However, if the land acquired, or any portion thereof, is not used for the purpose for which it was acquired or for any other declared public purpose, within reasonable time, Government must offer the land to the original owner/perpetual lessee/tenant of agricultural land who has acquired occupancy rights, or their heirs as the case may be, (unless he or they are not found after diligent enquiry) on repayment of the amount of reasonable compensation or a proportionate portion thereof. It should also be made open to the owner etc. or his heirs to claim back the said land on the above terms from Government, and if the Government fails to act in this matter, an action for reconveyance and possession of the superfluous land would lie in the Court.

2.44. This step has become necessary to safeguard the 'land owner' from irresponsible if not wanton actions of such executive officers (and unfortunately their number is not negligible) who function only as the agents of the State and completely forget that their act also involves considerable hardship and deprivation to the citizens of their country who have also certain basic rights. This would induce them to calculate and estimate the quantity of land needed much more carefully, and the story of acquiring a much larger quantity of land (which has come again and again before us in evidence) will perhaps not be repeated so often. This would also stop the abuse of this excessive land for 'Private purpose', which was acquired in the name of 'Public Purpose' by those in whose favour the acquisition has been made. We, therefore, feel that provisions on the proposed lines is necessary, to check a form of abuse which is at least frequent, if not rampant.

⁴¹. Land Clauses Consolidation Act, 1845, Section 129.

⁴². Land Clauses Consolidation Act, 1845, Section 130.

⁴³. Land Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18) s. 131. That section provides also for the execution of the deed and for the form of receipt. See also Halsbury's Laws of England, 3rd Edn. Vol. 10 Paras 473,414, 415(PP.224-226) and Cripps, Compulsory Acquisition of Land-11th Ed., Paras 3-391 to 3-403.

⁴⁴. Land Clauses Consolidation Act, 1845, Section 127.

⁴⁵. Cripps—Compulsory Acquisition of Land, Para 3-361.

**Public Purpose as defined in the Central and the State Acts and
in the draft as proposed by the Law Commission**



Definition of Public Purpose

(1) Central Land Acquisition Act, 1894

The expression "public purpose" includes the provision of village-sites in districts in which the (appropriate Government) shall have declared by notification in the official Gazette that it is customary for the Government to make such provision.¹

(2) Maharashtra State

The expression "public purpose" includes—

- (1) the provision of village sites in districts in which the (appropriate Government) shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision (and a housing scheme as defined in the Land Acquisition (Bombay Amendment) Act, 1948); and
- (2) the acquisition of land for purposes of the development of areas from public revenue or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment or sale, with the object of securing further development.²

(3) Gujarat State

The expression "public purpose" includes—

- (1) the provision of village sites in districts in which the (appropriate Government) shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision (and a housing scheme as defined in the Land Acquisition (Bombay Amendment) Act, 1948); and
- (2) the acquisition of land for purposes of the development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment or sale, with the object of securing further development);
- (3) a housing scheme which the State Government may from time to time undertake for the purpose of increasing accommodation for housing persons and shall include any such scheme undertaken from time to time with the previous sanction of the State Government by a local authority or company.³

(4) Uttar Pradesh State

The following clause has been substituted for the original clause (f):—

- (f) the expression 'public purpose' includes provision for or in connection with—
- (i) sanitary improvements of any kind including reclamation;
 - (ii) the laying out of village sites, townships or

the extension, planned development or improvement of existing village sites or townships;

(iii) the settlement of land for agriculture with the weaker section of the people.⁴

(5) Mysore State

The expression "public purpose" includes—

- (i) the provision of village sites;
- (ii) the provision of land for planned development from public funds and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;
- (iii) the provision of land for town or rural planning under any law relating to such planning;
- (iv) the provision of land,—
 - (a) for carrying out any housing scheme or health scheme sponsored by the Central Government or any State Government or a local authority; or
 - (b) for clearing slum areas; or
 - (c) for relieving congestion; or
 - (d) for housing poor, landless, or displaced persons or persons residing in areas affected by floods;
- (v) the provision of—
 - (a) residence for any person holding an office of profit under the Central Government or a State Government, or accredited as a diplomatic consular or trade representative of a foreign Government;
 - (b) building for locating a public office;
- (vi) the provision of land for corporations owned or controlled by the State, or other nationalised industries or concerns;
- (vii) the provision of land for any local authority and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development;
- (viii) the provision of land for a company,—
 - (a) where the land is needed for the construction of some work and such work is likely to prove substantially useful to the public, or
 - (b) where the land is needed by a building co-operative society or corporation for the construction of houses;
- (ix) the provision of land for any charitable trust.

Explanation.—"Charitable trust" includes a trust established or to be established for the relief of the poor, education, medical relief or advancement of any other object of general public utility.⁵

¹. (Section 3(f) of the Central Land Acquisition Act, 1894). (As modified upto the 1st November, 1967.)

². (Section 3(f) of the Land Acquisition Act, 1894, in its application to the State of Maharashtra).

³. (Section 3(f) as amended by Gujarat Act No. 20 of 1965).

⁴. (Section 3(f) as amended by U.P. Act XXII of 1954).

⁵. (Section 3(f) of the Land Acquisition (Mysore Extension and Amendment Act, 1961.) (Mysore Act No. 17 of 1961).

6) Bihar State

The expression 'public purpose' includes provision for or in connection with—

- (i) sanitary improvements of any kind including reclamation; and
- (ii) the laying out of village sites or townships, or the extension, planned development or improvement of existing village sites or townships.¹

7) Madhya Pradesh

The expression 'public purpose' includes the provision of land for agriculture or for residential, business, or industrial purposes² or for any purpose incidental to any of these with a view to resettlement and rehabilitation of displaced persons.

The definition of 'displaced persons' as given in this amending Act:

"Displaced person" means any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or fear of such disturbances in any area now forming part of Pakistan, has been displaced from or has left his place of residence in such area after the 1st day of March, 1947, and who has subsequently been residing in India.³

(8) Rajasthan

The expression "public purpose" includes the provision of village sites in districts in which the Government shall have declared by notification in the Rajasthan Gazette that it is customary for the Government to make such provision; and also includes planned development of lands from public funds and subsequent disposal thereof in whole or in part by lease or sale or in such other manner as may be directed by the Government with the object of securing further development as planned.⁴

Certain important amendments have recently been made to the Rajasthan Land Acquisition Act, 1953 by the Rajasthan "Housing Scheme" (Land Acquisition) Act, 1960, which came into force from the 9th November 1960, and is to remain in force for 20 years. As a result of these amendments 'housing schemes' as defined in the Act, are now included in the definition of "public purpose" given in the Rajasthan Land Acquisition Act, 1953.

"Housing Scheme" as defined in Section (2) of the Rajasthan Housing Scheme Land Acquisition Act, 1960 means—

"Any housing scheme which the State Government may, from time to time, undertake for the purpose of increasing accommodation for housing persons and shall include any such scheme undertaken from time to time with the previous sanction of the State Government by a local authority or a company."

(9) Nagaland

The Land Acquisition Act, 1894, has ceased to apply to the State of Nagaland. However, the corresponding Act now in force in the State of Nagaland is the Nagaland Land (Requisition and Acquisition) Act, 1965. The expression 'Public Purpose' has not been defined in this Act but acquisition of land under this Act is restricted to certain public purposes only, which are enumerated in section 9(1) read with section 3(1) of the said Act. These purposes are as follows:—

- (1) Public works;
- (2) Other development measures;

- (3) Maintaining supplies and services essential to the life of the community;
- (4) Providing proper facilities for accommodation, transport, communication, irrigation, flood control and anti-erosion measures including embankment and drainage;

(5) Providing land individually or in groups to:—

- (a) landless, flood affected or displaced persons⁵; or
- (b) a society registered under any law for the time being in force; or a company incorporated under any law for the time being in force, formed for the benefit and rehabilitation of landless, flood affected or displaced persons.

(10) Law Commission

The expression "public purpose" includes—

- (i) the provision of village sites in districts in which the appropriate Government shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision;
- (ii) the provision of land for planned development from public funds and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;
- (iii) the provision of land for town or rural planning under any law relating to such planning;
- (iv) the provision of land—
 - (1) for carrying out any housing scheme or health scheme sponsored by the Union Government or any State Government or a local authority, or
 - (2) for clearing slum areas, or
 - (3) for relieving congestion, or
 - (4) for housing poor, landless, or displaced persons, or persons residing in areas affected by floods;
- (v) the provision of—
 - (1) residence for any person holding an office of profit under the Central Government or accredited as a diplomatic consular or trade representative of a foreign Government.
 - (2) building for locating a public office;
- (vi) the provision of land for corporations owned or controlled by the State, or other nationalised industries or concerns.
- (vii) the provision of land for any local authority and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development;
- (viii) the provision of land for a company—
 - (a) for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith; or
 - (b) where the land is needed for the construction of some work and such work is likely to prove substantially useful to the public;

¹. (Section 3(f) as amended by Bihar Act, 11 of 1961).

². (Section 3(f) as amended by C.P. and Berar Act, XX of 1949).

³. (Sec. 3(f) of the Rajasthan Land Acquisition Act, 1953).

⁴. "displaced person" means—(i) any person, who on account of Civil disturbances or the fear of such disturbances in any area now forming part of Nagaland has been compelled to leave his original or ordinary place of a residence in such area after the 15th day of August, 1947 and is in distress, or (ii) a person who has been displaced due to various acquisition proceedings relating to Land in Nagaland since 1947. (Section 2(c) of the Nagaland Land Requisition and Acquisition) Act—1965).

(ix) the provision of land for a cooperative society—

(a) for the erection of dwelling houses for workmen employed by the co-operative society or for the provision of amenities directly connected therewith; or

(b) where the land is needed for the construction of some work and such work is likely to prove substantially useful to the public; or

(c) where the land is needed by a building co-operative society for the construction of houses;

(x) the provision of land for any charitable trust;

Explanation.—"Charitable trust" includes a trust established or to be established for the relief of the poor, education, medical relief or advancement of any other object of general public utility.¹

Tabular statement showing which of the clauses in the definition of public purpose (as proposed by the Law Commission) have been adopted in the State Acts

Clauses of the Definition of public purpose in the draft of Law Commission.	Name of the States adopting the Clauses
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Cl. (i)	The Central Act [S. 3 (f)]. 1. Maharashtra [S. 3(f) (i)]. 2. Gujarat [S. 3(f) (i)]. (with slight modification). 3. Uttar Pradesh [S. 3 (f) (i)]. (with slight modification) 4. Mysore [S. 3(f) (i)]. (with slight modification). 5. Bihar [S. 3(f) (ii)]. 6. Andhra Pradesh. 7. Assam. 8. Madhya Pradesh. 9. Madras. 10. Mysore. 11. Orissa. 12. Punjab. 13. Haryana. 14. Rajasthan. 15. West Bengal.
Cl. (ii)	1. Maharashtra [S. 3(f) (2)]. (with slight modification). 2. Gujarat [S. 3(f) (2)]. (with slight modification). 3. Mysore. (with slight modification). 4. Bihar [S. 3 (f) (ii)]. (with slight modification). 5. Madhya Pradesh [S. 3 (f) (ii)]. (with slight modification). 6. Rajasthan [S. 3 (f) (i)].
Cl. (iii)	1. Bihar [S. 3 (f) (iv)]. (with slight modification). 2. Uttar Pradesh [S. 3 (f) (iii)]. (with slight modification). 3. Mysore [S. 3 (f) (iii)]. (with slight modification).
Cl. (iv) (i)	1. Gujarat [S. 3 (f) (1) and (3)]. (with slight modification). 2. Mysore [S. 3 (f) (iv) (a)]. (with slight modification). 3. Rajasthan [S. 3 (f)].

¹. (pp. 53-55 of the Tenth Report of the Law Commission of India Law of acquisition and requisitioning of land).

**Clauses of the Definition of public purpose
in the draft of Law Commission**

Name of the States adopting the Clauses

Cl. (iv) (ii)	.	.	.	.	.	Mysore [S. 3 (f) (iv) (b)].
(iii)	.	.	.	.	.	Mysore [S. 3(f) (iv) (c)].
(iv)	.	.	.	.	.	Mysore [S. 3 (f) (iv) (d)].
Cl. (v) 1.	.	.	.	.	.	Mysore [S. 3 (f) (v) (a)].
2.	.	.	.	.	.	Mysore [S. 3 (f) (v) (b)].
Cl.(vi)	.	.	.	.	.	Mysore [S. 3 (f) (vi)].
(vii)	.	.	.	.	.	Mysore [S. 3 (f) (vii)].
(viii) (a)	.	.	.	.	.	Mysore [S. 3 (f) (viii) (b)]
(b)	.	.	.	.	.	Mysore [S. 3 (f) (viii) (a)].
Cl. (ix) (a)	.	.	.	.	.	
(b)	.	.	.	.	.	
(c)	.	.	.	.	.	Mysore [S. 3 (f) (viii) (b)].
Cl. (x)	.	.	.	.	.	Mysore [S. 3 (f) (ix)].



CHAPTER 3

**PRINCIPLES WHICH SHOULD GOVERN ACQUISITION
OF LAND FOR COMPANIES IN THE PUBLIC AND PRIVATE
SECTORS UNDER THE LAND ACQUISITION ACT, 1894**



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INDEX

	PARAS No.
1. Two kinds of Acquisitions	3.1.
2. What Companies/Concerns can avail of Part VII	3.2.
3. Public Companies and Private Companies	3.3.
4. Issues	3.5.
5. Whether the present provisions of the Act enabling a Company to acquire land for its purposes should be retained	3.7.
6. Purposes for which acquisition can be made for companies under s. 40	3.8.
7. Object of amendment of ss 40 and 41	3.10.
8. Our views with regard to s. 40 (1)(aa) and s. 41(4A).	3.18.
9. Whether the existing restrictions for acquisition of land for companies are adequate.	3.19.
10. Distinction between the procedure for acquisition for a public purpose and acquisition for a company	3.20.
11. Restrictions on acquisition for companies under the existing law	3.22.
12. Acquisition for a company for a public purpose under Part II	3.27.
13. Our Recommendations	3.33.
14. Our Recommendations	3.39.
A. Reverter of Land	3.40.
B. Composition of Land Acquisition Committee	3.41.
C. Incorporation of Rules in the Act.	3.44.
D. Amendment of Section 39	3.45.
E. Extent of contribution by the State in case of acquisition for a company for a public purpose.	3.46.
15. Land Acquisition (Companies) Rules, 1963	Annexure-A
16. List of Statutory Corporations and Government Companies under Direct Central Government Management	Annexure-B



CHAPTER 3

Principles which should govern Acquisition of Land for Companies in the Public and Private Sectors under the Land Acquisition Act, 1894

Two kinds of Acquisitions

We have been called upon to examine *inter alia* the scheme of acquisition of land for public purposes, and for companies in the public and private sectors under the Land Acquisition Act, 1894. The Act deals with two kinds of acquisitions; (1) for a public purpose, at the cost of the Government, and (2) for a purpose akin to such a purpose, at the cost of a Company, and to the latter class of acquisition the provisions of Part VI consisting of Sections 38 to 44-B are attracted. We have already dealt with the question of public purpose, its justifiability, etc. in Chapter 2. We now proceed to deal with the question of acquisition of lands for companies.

What Companies/Concerns can avail of Part VII

3.2. The expression 'Company' is defined in Section 3(e)¹ of the Act, and a Corporation incorporated by the Indian law has also been held to be a company within the meaning of Section 3(e).² Moreover, an industrial concern ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith, is, so far as concerns the acquisition of such land, deemed to be a company for the purposes of Part VII.³

Public companies and private companies

3.3. The Act makes a distinction, in the matter of acquisition of land, between public companies and government companies on the one hand, and private individuals and private companies on the other. An acquisition for a public company including a government company can be made for any of the three purposes specified in clause (a), (aa) and (b) of Section 40(1) of the Act. However, a land cannot be acquired for a private company other than a Government company except for the purpose mentioned in clause (a) of Section 40(1), i.e., for the erection of the dwelling houses for

workmen employed by the company or for provision of amenities directly connected therewith.

3.4. The provisions of Part VII can thus be put into motion not only by a company including a cooperative society and a society registered under the Societies Registration Act, 1860, but also by a statutory corporation, and an industrial concern, though such concern is, not, strictly speaking, a company.

Issues

3.5. The following issues were raised before us in connection with the acquisition of lands for companies:—

- (1) Whether the present provisions of the Act enabling a company to acquire land for its purposes should be retained.
- (2) In case acquisition of land for a company were permitted, should the special procedure prescribed by Part VII of the Act and the Land Acquisition (Companies) Rules, 1963, be followed in all cases. In the alternative, should acquisition of land for a company be allowed to be made under Part II, instead of Part VII of the Act, if the same is for a public purpose; and if so, what should be the extent of contribution by the State in the case of an acquisition for a company for a public purpose?
- (3) Whether the restrictions imposed by Part VII of the Act and the Land Acquisition (Companies) Rules, 1963, are adequate in the case of public and private limited companies. Should these restrictions be relaxed in the case of Government companies and if so, to what extent?
- (4) Whether the safeguards provided under the existing law are sufficient for the purpose of avoiding excessive acquisition and non-utilisation of the land or a portion thereof for the purpose for which it is acquired. If not, what further safeguards should be provided for?

3.6. We proceed to deal with these issues.

¹ The expression 'Company' as defined in Section 3(e) of the Act, means a Company registered under the "Indian Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament (of the United Kingdom) or by an Indian Law, or by Royal Charter or Letters Patent and includes a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912 or any other Law relating to cooperative societies for the time being in force in any State.

² See *Valjibhai Muljibhai Sonji v. State of Bombay*, A.I.R. 1963, S.C. 1890, where it has been held that the State Transport Corporation incorporated under the Road Transport Corporation Act, 1950, is a company within the meaning of Section 3(e) of the Land Acquisition Act.

³ Section 38A of the Land Acquisition Act.

⁴ Section 44-B of the Land Acquisition Act.

Whether the present provisions of the Act enabling the company to acquire land for its purposes should be retained

3.7. The basic question for consideration is whether the present provisions of the Act enabling the companies to acquire the lands of others for industrial purposes should be retained. It was urged before us mainly by the land owners that there was no justification for diversion of good agricultural lands to industrial uses at the instance of companies which were floated with the sole object of making private gains. Acquisition of land for such companies, it was urged, hardly serves any public purpose. In our opinion, the above view though it has some force is not entirely correct. It is true that the Act contemplates acquisition for a public purpose, and also for a company thus indicating that acquisition for a company cannot be wholly equated with acquisition for a public purpose. However, as will be seen presently, the Act permits acquisition for companies for purposes which are akin to public purposes.

Purposes for which acquisition can be made for companies under s. 40

3.8. The purposes for which the acquisition of land for companies may be made are rather restricted and they have been specified in Section 40(1) of the Act. Before the amendment of 1962, such acquisition could be made for obtaining land (a) for the construction of dwelling houses for workmen or for the provision of amenities directly connected therewith,⁵ or (b) for the construction of some work which is likely to prove useful to the public.

3.9. Section 40(1)(b) and section 41 of the Land Acquisition Act came up for consideration before the Supreme Court in the case of *R. L. Arora vs. the State of U.P.*⁶ The Supreme Court held that land can be acquired for a company under section 40(1)(b) read with section 41 of the Act only when the work to be constructed would be directly useful to the public and the public would be entitled to use the work as of right for its own benefit in accordance with the terms of the agreement. The Court, therefore, held that acquisition of land for the construction of textile machinery parts factory, and the terms in agreement under Section 41 providing that those who have business with the company shall have right of access and use of the land, as may be necessary, for the transaction of their business with the firm did not satisfy the requirements of sections 40 and 41. The Court pointed out that under the relevant words in sections 40(1)(b) and 41, it is the works like a hospital, a public reading room or a library or an educational institution open to the public or such other work as the public may directly use that are con-

templated and it is only for such works which are useful to the public in this way and can be directly used by it that the land can be acquired for a company under the Act.

Object of Amendment of sections 40 and 41

3.10. The interpretation of the relevant provisions in sections 40 and 41 would have rendered many acquisitions for companies invalid, for the Governments of States had often assumed that use of land for construction of buildings to be utilised by a company which manufactures goods useful to the public, justified acquisition of land and it was not necessary to provide in the agreement under Section 41(5) a Covenant that the public shall have directly a right to use the works. In the various States, land was acquired for companies engaged in industries which were likely to promote economic development of the country or which were essential to the life of the community. Some States represented that the decision of the Supreme Court in the first *Arora* case would have far reaching consequences in respect of acquisition of land for companies, and they expressed the fear that the decision may render planned development of industries extremely difficult and also that there would be a danger that the acquisition of land made for companies in the past might be questioned in courts of law and claims may be made by previous owners whose lands have been acquired, for restoration of land or payment of damages. In order to overcome these difficulties, the Land Acquisition (Amendment) Ordinance, 1962 (3 of 1962) was promulgated on 20th July 1962, suitably amending sections 40 and 41 of the Act, and also validating all past acquisitions of land made for companies. The said Ordinance was replaced by Act 31 of 1962, which was made retrospective from July 20, 1962, the date on which the Ordinance was promulgated.⁷

3.11. Under clause (aa) of Section 40(1) which was introduced by the Land Acquisition (Amendment) Act, 1962, (Act 31 of 1962), it is provided that all acquisitions needed for the construction of some building or work for a company would be permissible if the company is engaged or is taking steps for engaging itself in any industry or work, which is for a public purpose. As a result of this amendment, the acquisition of land for a company for the construction of textile machinery parts factory, is permissible, and was upheld by the Supreme Court in the Second *Arora* case.⁷ The Court held that the purpose of the company was a public purpose (within the meaning of clause (aa) of S. 40(1), namely, manufacture of textile machinery parts, and that the acquisition was also for the construction of work for that purpose. If the acquisition is for a public purpose as provided in clause (aa) of Section 40, it is not necessary (ac-

⁵. Acquisition of buildingsites for residential houses for industrial labourers has been upheld as an acquisition for public purpose by the Supreme Court in *Jhandulal v. State of Punjab*, AIR 1961, S.C 343.

⁶. A.I.R. 1962—S.C. 764.

⁷. See the Statement of Objects and Reasons for Act 31 of 1962.

R.L. Arora v. State of U.P.—A.I.R. 1964 S.C. 1230.

cording to the Court) that the Agreement under Section 41 of the Act should provide for regulation or control of the products of a company, i.e. control by the Government of the quantum, production and distribution or the price of the produced articles.

3.12. It was represented to us that the law so amended is likely to lead to the abuse of power by those in authority in favour of big industrialists and that, therefore, acquisitions for such purposes which really advance a private purpose far more than a public purpose should not be permitted.

3.13. Though there is some truth in this contention, the apprehension does not appear to be as real as suggested. While it is true that industrial concerns and Companies, working purely for their private profits, should not be allowed to acquire land through the agency of the Government, different considerations would arise when the land is sought to be acquired under the amended provision, for a company engaged in an industry which is for a public purpose.

3.14. In the first place, acquisition for the purposes of clause (aa) can only be made for a Government Company or a Public Company; and cannot be made for a private company or an individual. Section 44-B, which has been inserted by Act 31 of 1962, enacts that no land shall be acquired under Part VII for a private company, which is not a Government Company, except for the purposes mentioned in clause (a) of Section 40(1), i.e. the erection of dwelling houses for workmen employed by the company or for provision of amenities directly connected therewith. The intention of the Legislature clearly is that private individuals and private companies which really consist of a few private individuals banded together should not have the advantage of acquiring land even though they may be intending to engage in some industry or work which may be for a public purpose in as much as the enrichment consequent on such work goes to private individuals or to a group of them who have formed themselves into a private company. Acquisition under clause (aa) of Section 40(1) would thus be permissible only in the case of public companies and Government companies, private or public. Public companies are broad-based and Government companies are really in a sense not different from Government though for convenience of administration a Government company may be formed, which thus becomes a separate legal entity.

3.15. Secondly, industrial undertakings in the private sector which are incorporated as public companies have necessarily to fit into the framework of the social and economic policies of the State and will be subject to the control and regulation in terms of the Industries (Development & Regulation) Act, 1951, and other relevant legislation. The Companies Act, 1956 contains detailed provisions regulating managerial behaviour of persons in charge of companies. Besides, important industries

in the private sector are subjected to State regulations through control of production, prices, distribution policies and even in terms of industrial location. It is desirable to allow such undertakings to develop with as much freedom as possible consistent with the targets and objectives of the national plan but with the reasonable safeguards against its abuse. Industries in the private sector cannot develop unless legitimate assistance is given in the matter of communications, railway sidings, water and power, correct location of land for obtaining such facilities, etc. It is noticed that some States have taken steps, legislative and executive, to promote and assist in the rapid and orderly establishment, growth, and development of industries within their area.

3.16. With the attainment of Independence, industrial development has become one of the major objectives of Government policy. The Industrial Policy Resolution, 1948 stated that "a mere redistribution of existing wealth would make no essential difference to the people and would merely mean the distribution of poverty. A dynamic national policy must, therefore, be directed to a continuous increase in production by all possible means, side by side with measures to secure its equitable distribution. In their Resolution on Industrial Policy, dated the 30th April, 1956, the Government of India have emphasised that the entire country can attain a higher standard of living only by securing a balanced and coordinated development of the industrial and agricultural economy in different regions. It is, therefore, necessary that proper amenities and incentives should be provided for all those engaged in the industry. It is not possible to promote the rapid rise in the standard of the living of the people unless there is an increase in production, both agricultural and industrial, and in particular, production of capital equipment goods, satisfying the basic needs of the people and of commodities, the export of which will increase earnings of foreign exchange. Such an increase in production is necessary in the public as well as the private sector.

3.17. An acquisition for a public purpose as also an acquisition for a company are thus governed by consideration of public utility, production of textile machinery parts, steel, refrigerator equipment etc. which save foreign exchange, as well as contribute to the industrial development of the State, would also benefit the community by promoting a higher standard of living and providing opportunities for employment.

Our views with regard to s. 40(1)(aa) and s. 41(4A)

3.18. Sections 40 and 41 of the land Acquisition Act were amended by Act 31 of 1962 with the express object of facilitating planned development of industries. We do not think there is enough justification for recommending the repeal of clause (aa) of Section 40(1) and clause 4(A) in Section 41 of the Act. Indeed it would not be wise to impose

a total ban on acquisition of land for companies, which are engaged or taking steps for engaging themselves in any industry or work, which is for a public purpose. While conceding the principle of acquisition of land for companies, we have found that these companies were having a merry innings with the support of the acquisition authorities very frequently to the detriment and occasionally gross detriment of the poor land-owner. This must be stopped by placing suitable restrictions and safeguards to protect the interests of the land owner against the abuse of arbitrary power in such cases. We propose to turn our attention to this aspect of the matter a little later.

Whether the existing restrictions for acquisition of Land for companies are adequate

3.19. The next question for consideration is whether the restrictions imposed by Part VII of the Act and the Land Acquisition (Companies) Rules, 1963 are adequate in the matter of acquisition of land for companies. In order to understand and appreciate our recommendations in this regard against the background of the public grievances, it is necessary to examine the existing provisions of the law. We proceed to do so.

Distinction between the procedure for acquisition for a public purpose & acquisition for a company

3.20. While acquisition of land to be made for a public purpose is subject to the general provisions of Part II, acquisition thereof entirely at the cost of the Company is governed by the special provisions of Part VII of the Act, and the Land Acquisition (Companies) Rules,⁹ 1963. These Rules have been made by the Central Government in exercise of the powers conferred by S. 55 of the Act. Several restrictions have been imposed in public interest in the matter of acquisition of land under Part VII, which consists of Sections 38 to 44 B. The general procedure for acquisition for a public purpose as envisaged by Part II, consisting of Sections 4 to 17, is simple, and without restrictions corresponding to those embodied in Part VII and the Rules.

3.21. Acquisition of land under the Act ordinarily begins with the preliminary enquiry. Government notifies first under Section 4 that the land in any locality is needed or likely to be needed for a public purpose. Public notices are also given. This enables the officers of Government to enter upon lands to survey them and also enables persons interested to object to the acquisition generally and also particularly in accordance with the provisions of Section 5-A of the Act. After the objections have been considered, and Government has satisfied itself on the report or reports of the Collector that

a particular land is needed, a second notification is issued under Section 6 declaring that a particular land is required for a public purpose.

Restrictions on acquisition for companies under the existing law

3.22. This is, in substance, the general procedure to be followed before the declaration of the intended acquisition is made under Section 6 in cases of acquisition of land for a public purpose. However, a number of conditions are required to be satisfied before a declaration of the intended acquisition for a company can be made. The provisions of Sections 39 to 41 of the Act and Rule 4 of the Land Acquisition (Companies) Rules, 1963, lay down the conditions precedent to the application of the machinery of Part VII, if the acquisition is meant for a company simpliciter. Whenever a company makes an application to the appropriate Government for acquisition of any land, the appropriate Government must be satisfied with regard to certain matters. Rule 4 requires the Collector to make an inquiry regarding the matters stated therein. Such matters *inter alia* being that the land wanted by the Company for acquisition is not excessive, that the Company has made efforts and offered reasonable price to buy the land from the owners, that if the land happens to be good agricultural land, there is no other alternative land suitable for the company's purpose, and the approximate amount of compensation which would be payable, if the lands were acquired. The Collector after making such enquiry and, in case where the land proposed to be acquired is agricultural land, after consulting the Senior Agricultural Officer of the district, whether or not such land is good agricultural land, has to submit his report to the Government. The Government then forwards it to the Land Acquisition Committee¹⁰ and the Committee has to advise the Government.¹⁰ Rule 4(4) prohibits the Government from issuing a notification under Section 6 unless it has consulted the Committee and considered the said report as also the report made under Section 5-A and unless an agreement with the Company under Section 41 has been executed.

3.23. The inquiry, the report to be made consequent upon such inquiry, obtaining the opinion of the Land Acquisition Committee—all these are intended to enable the Government to come to a tentative conclusion that the land in question is or is likely to be needed for a public purpose and to issue thereafter a notification under Section 4. Section 39 of the Act prescribes that the provisions of Sections 6 to 37 shall not be put into force in order to acquire land for any company, unless the previous consent of the appropriate Government has been obtained and unless an agreement in terms of

⁹. These Rules are reproduced in Annexure A.

⁹ Such a Committee is constituted under Rule 3 (1) of the Land Acquisition (Companies) Rules, 1963, for the purpose of advising the appropriate Government in relation to acquisition of land under Part VII of the Act.

¹⁰ Under Rule 3(5) of the said rules, it is the duty of the Committee to advise the appropriate Government on all matters relating or arising out of the acquisition of land under Part VII of the Act, on which it is consulted and tender its advice within specified time. (For Rules, see Annexure—A)

Section 41 has been executed by the Company. Section 40(1) indicates that such consent shall not be given unless the Government is satisfied that the acquisition for the company is for one of the purposes mentioned in that sub-section. If the Government is so satisfied, then the company is required to enter into an agreement¹¹ with the Government providing to its satisfaction for the matters mentioned in Section 41, and Rules 5 and 6 of the Land Acquisition (Companies) Rules, 1963. The terms of the Agreement include *inter alia* the following matters, namely :—

- (i) that the Company shall not, except with the previous sanction of the appropriate Government use the land for any purpose other than that for which it is acquired;
- (ii) that the time within which the dwelling houses or amenities directly connected therewith shall be erected or provided or the building or work shall be constructed or executed shall not exceed three years from the date of transfer of the land to the Company;
- (iii) that the appropriate Government may for sufficient reasons extend the time by a period not exceeding one year at a time so, however, that the total period of extension shall not exceed three years;
- (iv) that if the company commits a breach of any of the conditions of the Agreement or utilises only a portion of the land for the purpose for which it was acquired, the appropriate Government may make an order declaring the transfer of the land or a portion thereof to the company as null and void whereupon the land or the unutilised portion thereof shall revert back to the appropriate Government, and directing that an amount up to 1/4th of the amount paid by the company as the cost of acquisition shall be forfeited to the appropriate Government as damages.¹²
- (v) that in any case of urgency where possession of any land is proposed to be taken under Section 17 before an award has been made, the Company shall deposit with the Collector an amount upto 2/3rds of the approximate amount of compensation payable in respect of the land.¹³

3.24. It is only after the Agreement embodying *inter alia* the above terms is executed and the appropriate Government has consulted the Land Acquisition Committee and considered the Report of the Collector that the declaration under Section 6 is issued. The procedure thereafter is the general

procedure prescribed by the Act. After completion of the acquisition proceedings and taking of possession by the Collector, under Section 16 or Section 17 of the Act, a deed is executed conveying the land to the company. This deed would embody the terms on which the land would be held by the company.

3.25. The power of the Government to make a declaration with respect to an acquisition for a company is thus circumscribed and therefore, the Government is expected to exercise it with due regard to the limitations placed upon it. A land acquired under Part VII of the Act is further subject to the restrictions on transfer mentioned in Section 44-A of the Act, which was introduced by the Amendment Act of 1962. This Section prohibits the Company for which any land is acquired under this part from transferring the said land or any part thereof by sale, mortgage, gift, lease, or otherwise except with the previous sanction of the appropriate Government. The conditions under which sanction may be given for transfer of such land are specified in Rule 8 of the Land Acquisition (Companies) Rules, 1963. The rule provides that sanction of the appropriate Government for transfer by sale, gift, etc. by the company shall not be given unless—

- (i) the proposed transfer of land alongwith dwelling houses, amenities, buildings or work, if any, is to some other Company or where the Company is a co-operative society, such transfer is to any or all of its members, or
- (ii) where the land has been acquired solely for the erection of dwelling houses for workmen employed by the company, the proposed transfer of the land alongwith dwelling houses, if any, is to such workmen or their dependent heirs;

3.26. Before giving any such sanction, the appropriate Government is also required to consult the Land Acquisition Committee. The provisions of Section 44-A and the rules cited above are intended to provide a safeguard that the land will only be used for the purposes for which it is acquired and not otherwise.¹⁴

Acquisition for a company for a public purpose under Part II

3.27. The provisions of Part VII and the rules, as outlined above, are required to be followed in the case of an acquisition for a company-simpli-citer. That does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under provisions of Part VII if the cost or a portion of the cost of acquisition is to come out of public funds. The

¹¹ Every such agreement is required to be published in Official Gazette and has thereupon (so far as regards the terms on which the public shall be entitled to use the work) the same effect as if it had formed part of the L. A. Act. (Sec. 42).

¹² Rule 5 of the Land Acquisition (Companies) Rules, 1963.

¹³ Rule 6 of the Land Acquisition (Companies) Rules, 1963. (For Rules, see Annexure—A).

¹⁴ R. L. Arora vs. State of U.P., A.I.R. 1964, 1230 (1241).

essential condition for acquisition for a public purpose is that the cost of acquisition should be borne wholly or in part out of the public funds. This is clear from Section 6 which indicates that the declaration for acquisition for public purpose cannot be made unless the compensation wholly or partly is to be paid out of public funds. It is now well settled by a series of decisions of the Supreme Court that an acquisition for a company may also be made for a public purpose within the meaning of the Land Acquisition Act if a part or whole of the cost of acquisition is met by public funds. It is only where the acquisition is for a company and its cost is to be met *entirely* by the company itself that the provisions of Part VII apply.¹⁵ Under the existing rules, acquisition of land for a company (other than a company owned or controlled by the Central and State Governments) is *ordinarily* made in accordance with the provisions of Part VII.¹⁶

3.28. It was, however, suggested by the representatives of certain companies before us that acquisition of land for a company should be allowed to be made under Part II instead of under Part VII of the Act, when public purpose is present. It was pointed out that there is not a complete dichotomy between acquisitions for a public purpose or for a company in certain circumstances. It is true that there may be a class of cases where the acquisition may be primarily for a company, but it may also be at the same time for a public purpose. Under the existing law as interpreted by the Supreme Court, an acquisition for a company can, no doubt, be made under Part II of the Act in cases of this kind even if a part of the compensation is paid out of the public funds. However, we are of the view that it would not be in the public interest to permit acquisition for companies under Part II. Acquisition under Part II is not subject to the salutary restrictions imposed by Part VII of the Act, and the Land Acquisition (Companies) Rules, 1963. Part II contains no safeguards against excessive acquisition of land, the taking of good agricultural land, and misuse of the land by a company. Nor are there any restrictions on transfer, if a land is acquired for a company under Part II. It is, therefore, desirable that the special procedure prescribed for acquisition of land for a company should be complied with in every case of acquisition of land for a company other than a Government Company/Corporation/Body Corporate.

3.29. We also find that the existing rules do not provide adequate safeguards against non-utilisation of the land or a portion thereof for the purpose for which it was acquired under Part VII. The Government of U.P. has brought to our notice the fact that in a large number of cases from the State of U.P. where land was acquired by the Government for companies, it was not utilised for the

purpose for which it was acquired and was allowed to remain vacant for a considerable length of time. In some cases, the area acquired was found to be considerably in excess of the requirements of the company. The Government of U.P. requested us to consider the desirability of so amending the law that the expropriators of the land are given an option to move the Government or the Court, for return of their land, if the same was not used for the purpose for which it was acquired or was found surplus to the needs of the company. Apart from the instances of non-utilisation of land by the companies in the State of U.P., there is also a typical case brought to our notice by 16 residents of village Gannaur, Tehsil, Sonapat. These persons have represented to us that 130 acres of their agricultural land with adequate sources of irrigation, namely, six wells and two tubewells were acquired for one company for manufacture of iron and steel tubes. However, the factory was erected in 25 acres only. The remaining 125 acres are still lying vacant. The ex-proprietors of the said land have requested us that the unutilised land should be returned to them as they have no other means of livelihood.

3.30. We called for the comments of the State Government and were informed that the composite Punjab Government had acquired the aforesaid land in September, 1962, for the establishment of a project for the manufacture of iron and steel tubes and possession was given to the company immediately thereafter. It has been admitted that 100 acres of the land have remained unutilised for a period of six years, but curiously enough, the State Government has not taken any action for the resumption of the unutilised portion of the land, as per the rules, in view of the recent request of the company for the expansion of their factory and the construction of a housing colony. In justification of its omission to take any action, the State Government has stated that the company is earning a colossal amount of foreign exchange as the largest exporters of steel tubes in the country. In our view, the omission of the State Government to take any action against the company has resulted in further extension of time exceeding six years (for the construction of the dwelling houses, building or work), which is not warranted by the provisions of the law. We cannot enumerate all the cases that have come to our notice but there is sufficient material to hold that the proprietors of Companies very frequently succeed in having a good lobby with the authorities concerned and that the law is not only moulded but violated in their interests.

3.31. As regards the terms on which the public shall be entitled to use the work, the agreement of the Company with the appropriate Government is

¹⁵ Jhandu Lal v. State of Punjab, 1961, 1 SCJ 529, R.L. Arora v. State of U.P. (1963) 1 S.C.J. 33 State of West Bengal v. P.N. Talukdar, A.I.R. 1965, S.C. 646; V. M. Soneji v. State of Bombay A.I.R., 1963 S.C. 1890. R.K. Agarwal v. State of West Bengal, A.I.R. 1965 SC 999.

¹⁶ Rule 9 of the Land Acquisition (Companies) Rules, 1963. (See Annexure—A).

given statutory effect under the existing law.¹⁷ However, the defect in the existing law is that the expropriator whose rights in the land are extinguished after acquisition has no *locus standi* to move the Government or the court for any action, whatsoever. He cannot even prefer a claim for the return of the land in case of breach of conditions of the agreement.

3.32. The above-mentioned cases clearly show that the existing provisions of the law are implemented neither in letter nor in spirit by the authorities concerned and that they are also defective to an appreciable extent. This is a sorry state of affairs which requires to be corrected immediately keeping in view the necessity of increased production both in agriculture and industry in a developing economy.

Our Recommendations

3.33. Having considered the provisions of the law relating to acquisition of land under Part II and Part VII of the Act, we are of the view that subject to the changes hereinafter suggested by us, the provisions of Part VII of the Act and the Land Acquisition (Companies) Rules, 1963, should be complied with in *all* cases of acquisition of land for a company other than a Government Company/Corporation/Body Corporate. In other words, Government Companies/Corporations/Bodies Corporate should alone be entitled to invoke the provisions of Part II when the acquisition is also for a public purpose. The reasons which have prompted us to make an exception in the case of the public sector are given below.

3.34. The public sector has expanded since 1951 and has come to play an important role in the economy of our country. Within the public sector, there are two types of undertakings: (i) undertakings run directly by the departments or executive agencies of the Government, and (ii) undertakings run by statutory corporations and by Government companies registered in accordance with the provisions of the Companies Act, 1956. There are several ways in which the commercial industrial and economic activities of the State can be organised and managed. The managements such as the Railway Board and the Posts and Telegraphs Board as well as undertakings which are managed departmentally are set up by an executive act of the Government, but this kind of bureaucratic set up of management is not administratively convenient for managing the affairs of large industrial and commercial concerns. Management of the State enterprise through the medium of public corporations or companies has been the recognised policy of the Government ever since independence.¹⁸ Having regard to the adoption of the socialistic pattern of society as the national objective, as well as the need

for planned and rapid development, it has been decided by the Government that all industries of basic and strategic importance or in the nature of public utility services, should be in the public sector. Other industries which are essential and require investment on a scale which only the State in the present circumstances, could provide, have also to be in the public sector. The State, has therefore, assumed direct responsibility for the future development of industries over a wider area,¹⁹ and a number of such public undertakings have been established either as Government companies (under the Companies Act) or as statutory corporations²⁰ (under Special Acts of Parliament). The number of statutory corporations and Government companies under direct Central Government management was 83 at the end of 1967-68. The list of these Central Undertakings is given in Annexure B. It would be seen therefrom that a wide range of area of the commercial activities of the State pertains to the key sectors of the industry. There is also a variety of patterns in the vast range of these enterprises.

3.35. A number of companies are wholly Government-owned, either by the Central Government or by the State Governments. Examples of companies which are wholly owned by the Central Government are Hindusthan Steel, Hindusthan Machine Tools, the National Coal Development Corporation, Heavy Electricals, Indian Refineries, etc.

3.36. Examples of wholly State-owned companies (that is, owned by a State Government, not the Central Government) are the Churk Cement Factory in Uttar Pradesh, the Madras Industrial Instrument Corporation, the Mysore Sugar Company, Bangalore, the Nizam Sugar Company, Hyderabad, the United Electrical Industries and the Travancore Titanium Products in Kerala. The public sector undertakings may be carried on by the Central Government or a State Government or jointly by the Central Government and a State Government, and in each case either solely or in association with private enterprise. These undertakings represent large investments of public funds for the production of goods and services vitally affecting the economy and social life of the community.²¹

3.37. The development of the public sector in consequence of the two resolutions on industrial policy and its growth since 1951, perhaps more particularly since 1956, is expected to be an important instrument used for avoiding concentration of economic power. This is intended to realise the objective of State Policy envisaged by Article 39(b) & (c) of our Constitution.

3.38. The above discussion would show that Government Companies/Corporations are set up basically for implementing the planning and development schemes of Government. Acquisition of land

¹⁷ Section 42 of the Land Acquisition Act.

¹⁸ See para 4 of the Government of India Resolution on Industrial Policy Dated 6th April, 1948.

¹⁹ See para 6 of the Government of India Resolution on Industrial Policy Dated 30th April, 1956.

²⁰ A statutory Corporation would be a company within the meaning of Section 3(e) of the Land Acquisition Act. See *Valjibhai Muljibhai Soneji v. State of Bombay*, A.I.R. 1963, S.C. 1890.

²¹ See *Government in Business* by Shri S. S. Khera, page 24.

for Government Companies/Corporations can be presumed to be for public benefit. On a careful consideration of all aspects of the matter, we are of the view that acquisition of land for Government companies and corporations should be allowed to be made under Part II of the Act, as an acquisition for a public purpose.

Our Recommendations

3.39. With regard to the changes to be made in the existing law relating to acquisition of land for companies, our recommendations are as follows:—

A. Reverter of land

3.40. (a) Action should be initiated by Government as a matter of course for declaring the transfer of land or a portion thereof to the company as null and void in every case where the land is not utilised within the specified or extended time for the purpose for which it was acquired;

(b) Where transfer of the land, or a part thereof to the Company is declared by the Government as null and void on account of the non-utilisation of the land or a portion thereof, by the Company within the time prescribed by the law and the land reverts back to the appropriate Government, Government should, within specified time not exceeding one year from the date of the reversion of the land, offer reconveyance of that land or part thereof, as the case may be, to the original owner or the perpetual lessee, or the tenant of agricultural land who has acquired occupancy rights, or their heirs as the case may be, can be found on diligent enquiry.

(c) The original owner, the perpetual lessee, or the tenant of agricultural land who has acquired occupancy rights, or their heirs, as the case may be, will have to refund the compensation received or a proportionate portion thereof before the reconveyance is sought.

(d) If the original owner, the perpetual lessee, or the tenant of agricultural land who has acquired occupancy rights, or their heirs, as the case may be, do not seek reconveyance on the above terms within six months from the date of the offer by the Government, the land would revert in the Government absolutely free from all claims of the original owner, the perpetual lessee, or the tenant of agricultural land who has acquired occupancy rights, or their heirs, as the case may be, and Government would, be free to use that land for any other purpose or dispose of the same in any manner as it likes.

(e) The owner, the perpetual lessee, or the tenant of agricultural land who has acquired occupancy rights, or their heirs, as the case may be, would be entitled to move the Government for return of the land or portion thereof which is not utilised within the prescribed time by the Company for the purpose for which it was acquired;

(f) On such a motion, the Government should take action to declare the transfer of such land to the Company as null and void and revert it in the claimant.

(g) It would be open to the parties to move the Court for the appropriate relief in case the Government fails to take the requisite action on his motion as aforesaid.

B. Composition of Land Acquisition Committee

3.41. We agree that the Land Acquisition Committee constituted under the Land Acquisition (Companies) Rules 1963, has an important role to play in as much as its advice would act as a valuable safeguard against excessive acquisition of land for companies, taking of good agricultural land, and non-utilisation of the land for the purpose for which it is acquired. However, in order to make the voice of the representative of the people more effective in the matter of acquisition of land for companies, we would like to suggest certain changes in the composition of the Committee.

3.42 Under Rule 3(2) of the Land Acquisition (Companies) Rules, 1963, the Committee consists of—

(i) the Secretaries to the Government of the Departments of Revenue, Agriculture and Industries or such other officers of each of the said Departments as the appropriate Government may appoint; and

(ii) such other members as the appropriate Government may appoint, for such term as that Government may, by order, specify.

3.43. The Appropriate Government is also empowered to appoint one of the members of the Committee to be its Chairman. We are of the view that, the members to be nominated by the appropriate Government under clause (ii) of Rule 3(2) should include at least 5 M.L.As. fairly representative, as far as possible, of various sections in the Assembly. In the case of acquisition for the Union/Union Territories, the Members of Parliament, fairly representative, as far as possible of various sections in Parliament should be appointed under this clause.

C. Incorporation of Rules in the Act

3.44. We are of the view that, subject to the changes suggested by us, the provisions of the Land Acquisition (Companies) Rules, 1963, should be incorporated in the Land Acquisition Act itself.

D. Amendment of Section 39

3.45. We endorse the recommendation of the Law Commission that Section 39 should be retained with the modification that where land is to be acquired for any company, no notification under

Section 4(1) should be issued except by or with the previous consent of the appropriate Government. The existing provision, *inter alia* prohibits the Government from issuing a notification under Section 6 except with the previous consent of the appropriate Government. We think that even the provisions of Section 4 should not be put in force for acquiring land for a company without the consent of the appropriate Government.

E. Extent of contribution by the State in case of acquisition for a company for a public purpose

3.46. We have already noted that under the existing law, an acquisition for a company can be made as an acquisition for a public purpose if, 'a part or whole' of the cost of acquisition is paid from the public funds as envisaged by the proviso to Section 6 of the Act. It is well settled by decisions of the courts that the expression 'part' does not necessarily mean a substantial part.²² On the basis of the decisions of the courts, the State Governments have been acquiring private properties all over the country by contributing only insignificant or token amounts towards the cost of acquisition of land for companies. In the recent case of *Somawanti v. State of Punjab*,²³ it was held by the Supreme Court that the decision of the Government of Punjab to contribute Rs. 100 towards the cost of the acquisition of land, which was worth Rs. 4.60,000, (and which was acquired for a factory for manufacturing various ranges of refrigeration, compressing and ancillary equipment) satisfied the requirements of the Law. In his dissenting Judgment, Subba Rao J., however, pointed out that the payment of a part of compensation must have some rational relationship to the compensation payable in respect of the acquisition for a public purpose, as the object of the law was to provide for a safeguard against abuse of power. According to His Lordship, a substantial contribution from public coffers is ordinarily a guarantee that the acquisition

is for a public purpose. We are of the view that nominal contribution by the State amounts to colourable pretence for invoking the provisions of Part II of the Land Acquisition Act and cannot be approved. With all respects to the learned Judges of the Supreme Court, we find ourselves in complete agreement with the views of Subba Rao J., for it is beyond us to conceive that any State should be permitted to enforce any law which, to put it mildly, amounts to practise deception upon its citizens and thus gain its end even if it be conceded that they were laudable. However, as we have recommended that the provisions of Part VII should be complied with in all cases of acquisition of land for a company, other than a Government Company/Corporation/Body Corporate, the question of making contribution from the public funds would arise only in the case of acquisitions for Government Companies/Corporations/Bodies Corporate. In this context, it is also pertinent to note that the provision of lands for Corporations owned by the State or for Government Companies constitutes a public purpose under the inclusive definition of that expression as given by us.²⁴ In a Government Company, the paid-up share capital held by the Government would not be less than fiftyone per cent. Acquisition of land for ensuring and advancing the activities of the Government Companies/Corporations would under our scheme attract the provisions of Part II. Now as the considerable amount of public funds is required to be spent for the formation and successful functioning of a Government Company/Corporation, no useful purpose would be served by providing further in the Land Acquisition Act that a part of the public funds should also be contributed by the Government when acquisition is sought to be made for a Government Company. We are therefore of the opinion that the payment of contribution from the public funds should not be made obligatory for invoking the provisions of Part II in the case of Government Companies/Corporations/Bodies Corporate.

²² In *Senga Naicken v. Secy. of State*, ILR 50 Mad. 308 : (AIR 1927 Mad 245), it was held that the State's contribution of one anna out of Rs. 926·8·6 for acquiring land for a road, Rs. 926·7·6 having been contributed by the ryots, was sufficient compliance with S. 6(1) of the Act. In *Suryanarayana's case*, ILR (1946) Mad. 153; (AIR 1945 Mad 394) (FB) Ponnaiyah's case AIR 1926 Mad 1099, was overruled and the view taken in *Senga Naicken's case*, ILR 50, Mad. 308 : (AIR 1927 Mad. 245) was approved. The view taken in *Senga Naicken's case* (AIR 1927 Madras 245) has been followed by the various High Courts in India.

²³ A.I.R. 1963, S.C. 151.

²⁴ See Clause (VI) of the inclusive definition of public purpose as proposed by us in para 2.

ANNEXURE A

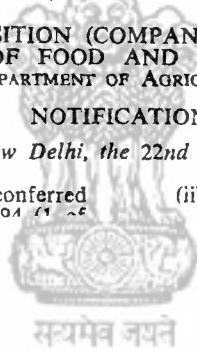
(Ref. Para 3.20)

LAND ACQUISITION (COMPANIES) RULES, 1963
MINISTRY OF FOOD AND AGRICULTURE
(DEPARTMENT OF AGRICULTURE)

NOTIFICATION

New Delhi, the 22nd June, 1963.

G.S.R. 1073.—In exercise of the powers conferred by section 55 of the Land Acquisition Act 1904 (19 of 1904) (ii) that the Company has made all reasonable



5. Matters to be provided in the agreement under Section 41.—(1) The terms of the agreement referred to in Section 41 of the Act shall include the following matters, namely:—

- (i) that the Company shall not, except with the previous sanction of the appropriate Government, use the land for any purpose other than that for which it is acquired.
- (ii) that the time within which the dwelling houses or amenities directly connected therewith shall be erected or provided or the building or work shall be constructed or executed shall not exceed three years from the date of transfer of the land to the Company;
- (iii) that where the appropriate Government is satisfied after such enquiry as it may deem necessary that the Company was prevented by reasons beyond its control from erecting, providing, constructing or executing dwelling houses or amenities or any building or work within the time specified in the agreement, the appropriate Government may extend the time for that purpose by a period not exceeding one year at a time so however that the total period of extension shall not exceed three years;
- (iv) that if the Company commits a breach of any of the conditions provided for in the agreement, the appropriate Government may make an order declaring the transfer of the land to the Company as null and void whereupon the land shall revert back to the appropriate Government and directing that an amount not exceeding one-fourth of the amount paid by the Company to the appropriate Government as the cost of acquisition under clause (1) of section 41 of the Act shall be forfeited to the appropriate Government as damages and the balance shall be refunded to the Company, and the order so made shall be final and binding;
- (v) that if the Company utilises only a portion of the land for the purpose for which it was acquired and the appropriate Government is satisfied that the Company can continue to utilise the portion of the land used by it even if the unutilised part thereof is resumed, the appropriate Government may make an order declaring the transfer of the land with respect to the unutilised portion thereof as null and void whereupon such unutilised portion shall revert back to the appropriate Government and directing that an amount not exceeding one-fourth of such portion of the amount paid by the Company as cost of the acquisition under clause (1) of section 41 of the Act as is relatable to the unutilised portion shall be forfeited to the appropriate Government as damages and that balance of that portion shall be refunded to the Company and the order so made shall, subject to the provisions of clause (vi), be final and binding;
- (vi) that where there is any dispute with regard to the amount relatable to the unutilised portion of the land, such dispute shall be referred to the Court within whose jurisdiction the land or any part thereof is situated and the decision of that Court thereon shall be final.

(2) Where the Company commits a breach of any of the terms of the agreement, the appropriate Government shall not make an order under clause (iv) or clause (v) of sub-rule (1), unless the Company has been given an opportunity of being heard in the matter.

(3) The appropriate Government shall consult the Committee before according any sanction under clause (1) of sub-rule (1) or extending the time under clause (iii) or making any order under clause (iv) or clause (v) of that sub-rule.

7—1 M. of F. & A./70

6. Additional matters which may be provided in the Agreement under Section 41.—(1) Without prejudice to the provisions of rule 5, the terms of the agreement referred to in section 41 of the Act may also include the following matters, namely:—

that, in any case of urgency where possession of any land is proposed to be taken under Section 17 before an award has been made under Section 11 of the Act, the Company shall deposit with the Collector free of interest, such amount (being not more than two thirds of the approximate amount of compensation payable in respect of the land as determined under clause (ii) of sub-rule (2) of rule (4) and within such time as the Collector thinks fit, to specify in this behalf.

(2) Where any amount has been deposited with the Collector under sub-rule (1), the Collector shall tender payment of the amount so deposited to the persons interested who, in the opinion of the Collector, are entitled to receive payment of compensation under sub-section (1) of section 31 of the Act and shall pay it to them, unless prevented by some one or more of the contingencies mentioned in sub-section (2) of section 31 of the Act, subject to the following conditions, namely:—

(i) the execution of an agreement by each recipient that the amount received by him would be adjusted against the compensation finally awarded and that where the amount received by him exceeds the amount of the compensation finally awarded, the excess amount shall be recoverable from him as an arrear of land revenue and that he shall not claim any interest under the provisions of the Act in respect of the amount received by him under this sub-rule; and

(ii) the execution of a bond by each recipient with or without security as the Collector may decide undertaking to indemnify the appropriate Government against any claim for compensation or part thereof by any other person.

(3) If the amount deposited by the company under sub-rule (1) or any part thereof is not paid under sub-rule (2), the Collector shall, as soon as practicable refund the same to the Company.

7. Submission of periodical reports.—For the purpose of ensuring that the conditions provided for in the agreement executed by the Company are complied with, the appropriate Government may direct the Collector or such other officer as that Government may appoint for the purpose, to submit to it and to the Committee, a periodical report, at such intervals of time as it may specify, indicating the conditions which have been or have not been complied with as well as the steps taken by the Company towards their compliance.

8. Conditions under which sanction may be given for transfer of land.—Where a Company for which land has been acquired under the Act applies for the previous sanction of the appropriate Government for the transfer of that land or any part thereof by sale, gift, lease or otherwise, no such sanction shall be given unless:—

(i) the proposed transfer of land alongwith dwelling houses, amenities, buildings or work, if any, is to some other Company or where the Company is a cooperative society, such transfer is to any or all of its members, or

(ii) where the land has been acquired solely for the erection of dwelling houses for workmen employed by the Company, the proposed transfer of the land alongwith dwelling houses, if any, is to such workmen or their dependant heirs;

provided that before giving any such sanction the appropriate Government shall consult the Committee.

9. Special provisions in relation to certain Companies:—

- (1) When an application is made to the appropriate Government for acquisition of any land by a Company other than a Company owned or controlled by the Central Government or any State Government, such acquisition shall ordinarily be made in accordance with the provisions of Part VII of the Act.
- (2) Where any land is proposed to be acquired for a Company, other than a Company owned or con-

trolled by the Central Government or any State Government, the special powers conferred on the appropriate Government under Section 17 of the Act shall not be exercisable unless it is satisfied that it is necessary to do so in order to avoid danger to life or property or that it is otherwise necessary to do so in public interest.

10. **Repeal.**—All rules made by the appropriate Government for the guidance of its officers with respect to acquisition of land for Companies under Part VII of the Act and in force immediately before the commencement of these rules shall, to the extent of the repugnancy, cease to have effect.

G. R. KAMAT,

Secretary.



ANNEXURE B

(Ref. Para 3.34)

LIST OF STATUTORY CORPORATIONS AND GOVERNMENT COMPANIES UNDER DIRECT CENTRAL GOVERNMENT MANAGEMENT

1. Export Credit and Guarantee Corporation Ltd.
2. Handicraft and Handlooms Export Corporation Ltd.
3. Indian Motion Pictures Export Corporation Ltd.
4. Minerals and Metals Trading Corporation of India Ltd.
5. State Trading Corporation of India Ltd.
6. Bharat Earth Movers Ltd.
7. Bharat Electronics Ltd.
8. Garden Reach Workshops Ltd.
9. Hindustan Aeronautics Ltd.
10. Mazagaon Docks Ltd.
11. Praga Tools Ltd.
12. National Research Development Corporation.
13. Life Insurance Corporation of India.
14. Central Fisheries Corporation Ltd.
15. Central Warehousing Corporation.
16. Food Corporation of India.
17. National Seeds Corporation Ltd.
18. Modern Bakeries India Ltd.
19. Bharat Heavy Electricals Ltd.
20. Bharat Heavy Plates and Vessels Ltd.
21. Cement Corporation of India Ltd.
22. Heavy Electricals (India) Ltd.
23. Heavy Engineering Corporation Ltd.
24. Hindustan Cables Ltd.
25. Hindustan Machine Tools Ltd.
26. Hindustan Photofilms manufacturing Company Ltd.
27. Hindustan Salts Ltd.
28. Instrumentation Ltd.
29. Mining & Allied Machinery Corporation Ltd.
30. Machine Tool Corporation of India Ltd.
31. National Industrial Development Corporation Ltd.
32. National Instruments Ltd.
33. National Newsprint & Paper Mills Ltd.
34. National Small Industries Corporation Ltd.
35. Sambhar Salts Ltd.
36. Triveni Structurals Ltd.
37. Tungabhadra Steel Products Ltd.
38. Film Finance Corporation Ltd.
39. Bokaro Steel Ltd.
40. Hindustan Steel Ltd.
41. Hindustan Steel Works Construction Ltd.
42. Bharat Aluminium Co. Ltd.
43. Hindustan Copper Ltd.
44. Hindustan Zinc Ltd.
45. National Coal Development Corporation Ltd.
46. National Mineral Development Corporation Ltd.
47. Neyveli Lignite Corporation Ltd.
48. National Project Construction Corporation Ltd.
49. Rehabilitation Housing Corporation Ltd.
50. Rehabilitation Industries Corporation Ltd.
51. Cochin Refineries Ltd.
52. Engineers (India) Ltd.
53. Fertiliser Corporation of India Ltd.
54. Fertilisers & Chemicals Travancore Ltd.
55. Hindustan Antibiotics Ltd.
56. Hindustan Insecticides Ltd.
57. Hindustan Organic Chemicals Ltd.
58. Indian Drugs and Pharmaceuticals Ltd.
59. Indian Oil Corporation Ltd.
60. Lubrizol India Ltd.
61. Madras Fertilisers Ltd.
62. Madras Refineries Ltd.
63. Oil and Natural Gas Commission.
64. Pyrites, Phosphates & Chemicals Ltd.
65. Central Road Transport Corporation Ltd.
66. Central Inland Water Transport.
67. Goa Shipyard Ltd.
68. Hindustan Shipyard Ltd.
69. Mogul Lines Ltd.
70. Shipping Corporation of India Ltd.
71. Air India.
72. Indian Airlines.
73. Ashoka Hotels Ltd.
74. Indian Tourism Development Corporation Ltd.
75. Janpath Hotels Ltd.
76. Hindustan Housing Factory Ltd.
77. National Buildings Construction Corporation Ltd.
78. Electronic Corporation of India Ltd.
79. Indian Rare Earths Ltd.
80. Uranium Corporation Ltd.
81. Hindustan Teleprinters Ltd.
82. Hindustan Latex Ltd.

CHAPTER 4
CONSTITUTIONAL REQUIREMENTS FOR COMPULSORY
ACQUISITION AND OUR APPROACH



सत्यमेव जयते

INDEX

	PARA No.
1. Right to Property under the Constitution	4.2 to 4.3.
2. Meaning of Acquisition under Article 31	4.4 to 4.5.
3. Acquisition of estates and other kinds of property-Limitations upon	4.6 to 4.8.
4. Legal and Political background of Articles 31, 31A and 31B	4.9 to 4.11.
5. Compensation-its meaning and justiciability before the Fourth Amendment	4.12 to 4.19.
(a) <i>Bela Banerjee's Case</i>	4.14 to 4.19.
6. Compensation, its meaning and Justiciability after the Fourth Amendment	4.20 to 4.30.
(a) <i>State of Gujarat by. Shantilal Mangaldas</i>	4.24 to 4.30.
7. Whether the law of acquisition must satisfy the test of reasonable restrictions	4.31 to 4.32.
8. Law of Acquisition must satisfy the requirements of Article 14 also	4.33 to 4.35.
9. Progressive reduction of compensation on the basis of slab system	4.36 to 4.40.
10. Directive Principles of State Policy	4.41 to 4.45.
11. First Amendment	4.46.
12. Fourth Amendment	4.47 to 4.48.
13. Land Reforms Legislation and its Implementation	4.49 to 4.52.
14. Seventeenth Amendment	4.53 to 4.55.
15. Views of the Law Commission on Quantum of Compensation	4.56.
16. Political views on quantum of compensation for acquisition and non-justiciability thereof	4.57 to 4.63
17. Our approach and recommendations	4.64 to 4.70.
18. Need for selfimposed restrictions on the power of acquisition	4.71 to 4.72.
19. Extracts of Article 31, 31A, 31B and the Ninth Schedule of the Constitution.	Annexure



CHAPTER 4

Constitutional Requirements for Compulsory Acquisition and our Approach

4.1. Item 2 of terms of reference requires us to examine the scheme of acquisition of land with particular reference to the principles for determining compensation. We bear in mind that our recommendations will have to be so framed as to satisfy the mandatory requirements of our Constitution for compulsory acquisition of land. This is how an examination of the constitutional background becomes relevant for our purpose.

Right to Property under the Constitution

4.2. The Right to property is one of the Fundamental Rights guaranteed by our Constitution Under Article 19(1)(f) all citizens have the right to acquire, hold and dispose of property. However, our Constitution gives protection to the Right to Private Property of citizens not absolutely but subject to reasonable restrictions to be imposed by law in the interest of general public under Clause 5 of Article 19. Article 31 further protects the right to property by defining limitations on the power of the State to take away property without the consent of the owner. As soon as the interest of the community so requires, the State can, under Article 31, deprive the owner (citizen or non-citizen) of his property by authority of law subject to payment of compensation if the deprivation is by way of acquisition or requisition of the property by the State.¹ The obligation to pay compensation for acquisition of property has thus been raised to the status of a Fundamental Right and can be enforced by citizens or foreigners alike in the highest court of the land. The extension of the protection to non-citizens is intended to ensure the flow of private foreign capital in the economic development of the country.

4.3. Article 31 does not exempt any kind of property from the power of 'eminent domain' belonging to the State. It does not prevent acquisition by the Union of property belonging to a State.²

Meaning of Acquisition under Article 31

4.4. The term "acquisition" is used in a limited sense. It refers to a transfer of ownership of property to the State or to a Corporation owned or controlled by the State. It is evident from clause (2)(A) of Article 31 that a law which deprives a person of property but does not transfer ownership of the property or right to possession of the property to the State is not a law for compulsory ac-

quisition or requisitioning. It would, therefore, follow that clause (2) of Article 31 is not attracted where there is mere deprivation of property short of acquisition within the meaning of clause (2A). Hence there is no obligation to pay compensation where a private owner is affected (i.e. by lowering of its value) or deprived of property by reason of the exercise of 'police' or regulatory powers of the State. To regulate the relations of landlord and tenant and thereby diminish rights hitherto exercised by the landlords in connection with his land is different from the compulsory acquisition of the land³ and no compensation can be claimed for such diminution of rights.

4.5. Clauses (4), (5) and (6) of Article 31 and Article 31-A and Article 31-B read with the enactments specified in the Ninth Schedule constitute exception to Article 31(2) and the legislation covered by these exceptions cannot be challenged on the ground of contravention of Article 31(2). The texts of Article 31, 31-A, 31-B and the Ninth Schedule are annexed.

Acquisition of estates & other kinds of property— Limitations upon

4.6. It would be seen from Articles 31 and 31-A(1)(a) that our Constitution makes a distinction in regard to the limitations for acquisition of Jagirs, Inams and other land tenures, described as estates,⁴ and other kinds of property. Under Article 31(2), the State is prohibited from making law for acquiring land and other property unless it is for a public purpose and unless it fixes the amount of compensation or specifies the principles for determining the same. However, Article 31-A(1)(a) lifts the ban to enable the State to implement the pressing agrarian reforms and it is provided specifically in Article 31-A(1)(a) that no law providing for the acquisition by the State of any 'estate' or of any-rights thereunder or the extinguishing or modification of any such rights, shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, Article 19, or Article 31. Acquisition of 'estates' cannot thus be challenged on the grounds of absence of public purpose or for want of compensation or adequate compensation⁵ or on the ground of imposition of unreasonable restrictions on the right to hold and dispose of property.

¹ Per Das J. in *State of Bihar v. Kameshwar Singh* 1952 SCR 889 (996-997).

² *State of West Bengal v. Union of India*, A.I.R. 1963, S.C. 1241.

³ *Thakur Jagannath Baksh Singh v. The United Provinces* (1944) 73 I.A. 123 and *Kishen Singh v. State of Rajasthan* (1955) 2 S. C. R. 531.

⁴ The expression 'estate' is defined in Article 31-A(2), the text of which is annexed.

⁵ AIR 1955 SC 504, AIR 1956 SC 503, AIR 1952 SC 252, AIR 1960 SC 1008, AIR 1953 SC 375, AIR 1956 SC 63.

4.7. Article 31, as originally enacted in the Constitution was substantially in the same terms as Section 299 of the Government of India Act, 1935. Clause (5)(a) of this Article provides that the provisions of Clause (2) of Article 31 shall not affect the provisions of any existing law other than the law to which provisions of Clause (6) of that Article apply.

4.8. The effect of Article 31(5)(a) is that if any law provided for the acquisition or requisition of property without a public purpose, or did not provide for payment of compensation such a law, if *validly enacted*, is not open to challenge on the ground that it violates Article 31(2). Under Section 299 of the Government of India Act, 1935, no legislature had the power to make a law for the acquisition of property except for a public purpose and except on payment of compensation, but Section 299(4) provided that nothing contained in that section was to affect existing law. The Land Acquisition Act was an existing law when the Government of India Act 1935, was enacted and was an existing law when our Constitution came into force. Though the Act itself is protected from challenge under Article 31(2) by virtue of Article 31(5)(a) of the Constitution, an amending provision, enacted after the commencement of the Constitution, must comply with Article 31(2). Legislation implementing our recommendations in relation to acquisition of land other than 'estates' will have to satisfy the requirements of Article 31(2) as well as Article 14 of the Constitution.

Legal and Political background of Arts. 31, 31A and 31-B

4.9. The problem of compensation cannot be fully understood without a reference to the legal and political background of Articles 31, 31-A and 31-B, and our approach to the question of compensation can be understood and appreciated only in the light of this background.

4.10. What is the meaning of Compensation? What are the relevant principles for determining the same? The guidelines laid down by our Supreme Court on these matters have thus a direct bearing on our work.

4.11. The American⁶ and the Australian⁷ Constitutions ensure payment of just compensation for taking of the property⁸—a. The expression "Com-

pensation" is not defined in our Constitution. After the Constitution (Fourth Amendment) Act, 1955, it carries a meaning different from the one given to it in *Mrs. Bela Banerjee's* case. The question whether an owner is guaranteed a 'just equivalent' for the property of which he is deprived at the date of compulsory acquisition of his property by the existing provisions of our Constitution, requires careful consideration in the light of the historical development of the principles governing payment of compensation by the State.

Compensation its meaning and justiciability before the Fourth Amendment

4.12. Article 31, as originally enacted in the Constitution, was substantially in the same terms as Section 299 of the Government of India Act, 1935. Clause (2) of Article 31 (which reproduces with some variation the principle of Section 299(2)) ran as follows before its amendment by the Constitution (Fourth Amendment) Act, 1955:—

"No property, movable or immovable including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which the compensation is to be determined and given."

4.13. The true effect of the above provision was considered by the Supreme Court in *State of West Bengal v. Mrs. Bela Banerjee*. In this case, the validity of the West Bengal Land Development and Planning Act, 1948, which was enacted primarily for acquisition of land for settling migrants from East Bengal on account of communal disturbances, fell to be determined. Compensation payable for compulsory acquisition of land needed for the purposes specified under the Act was not to exceed the market value of the land on December 31, 1946 though the land may be notified for acquisition many years after that date. The Calcutta High Court declared the provisions of S. 8 *ultra vires* and this decision was confirmed by the Supreme Court.

⁶ The Fifth Amendment to the Constitution of the U. S. provides that private property shall not be taken for public use without just compensation. Similar provisions in State Constitutions are obligatory on State authorities and while the Fifth Amendment does not bind the States, the Fourteenth Amendment, in providing that no State shall deprive any person of property without due process of law, in fact prohibits the States from taking private property for public use without compensation, and makes it necessary that the States, in the exercise of this power, use processes that are adapted to secure substantial justice. *Searl v. School Dist.* (1890) 133 U.S. 533, *Sweet v. Rechel* (1895) 159 U. S. 380; *Chicago, B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226.

⁷ 26 American Jurisprudence 2d—Eminent Domain, S. 1.

⁸ Under Section 51 of the Australian Constitution, the Commonwealth Parliament is empowered to make laws with reference to the acquisition of property on just terms for any State or person for any purpose in respect of which the Parliament has power to make laws.

⁹ a. The Japanese Constitution, 1946, by Article 25 provides similar guarantee as that incorporated in U.S. Constitution by the Fifth Amendment. The position in U. K. is that the British Parliament is supreme and its powers are not subject to any constitutional limitations.

1954—SCR 558.

Bela Banerjee's Case

4.14. Bela Banerjee's case laid down the following principles:—

- (1) The expression "compensation" in Art. 31(2) of the Constitution meant just equivalent of what the owner has been deprived of;
- (2) The principles laid down by the legislature shall be only for the determination of the compensation so defined;
- (3) whether the principles have taken into account the relevant elements to ascertain the true value of the property acquired is a justiciable issue to be adjudicated by the court; and
- (4) The fixation of an anterior date for the ascertainment of the value of the property acquired without reference to any relevant circumstances which necessitated the fixing of an earlier date for the purpose of ascertaining the real value is arbitrary.

4.15. In *State of Madras v. D. Namasivayya Mudaliar*¹⁰ where the point before the Court was whether the provisions in the Madras Lignite (acquisition of land) Act, 1953, with regard to compensation to be assessed on the market-value of the land prevailing as on August 28th, 1947, and not on the date on which notification was issued under Section 4(1) of the Land Acquisition Act, 1894, was in violation of Article 31(2) the Supreme Court observed that any principle for determination of compensation denying to the owner all increments in value between a fixed date and the date of issue of notification under Section 4(1) and denying compensation for the value of non-agricultural improvements since that fixed date must *prima facie* be regarded as denying to him the true equivalent of the land which is expropriated.

4.16. In this case, Shah J. speaking for the Court observed as follows:—

"Fixation of compensation for compulsory acquisition of lands notified many years after the date, on the market value prevailing on the date on which lignite was discovered is wholly arbitrary and inconsistent with the letter and

spirit of Art. 31(2) as it stood before it was amended by the Constitution (Fourth Amendment) Act, 1955. If the owner is by a constitutional guarantee protected against expropriation of his property otherwise than for a just monetary equivalent, it would be impossible to hold that a law which authorises acquisition of land not for its true value, but for value frozen on some date anterior to the acquisition, on the assumption that all appreciation in its value since that date is attributable to purposes for which the State may use the land at some future date must be regarded as infringing the fundamental right."

4.17. This case and two other cases viz. *N. B. Jeejeebhoy*¹¹ v. *Assistant Collector, Thanai*, and *Union of India v. Kamalabai Harjeevandas Parekh*¹² and others were decided by the Supreme Court following the principle of Mrs. Bela Banerjee's case.

4.18. In Bela Banerjee's case¹³ the Court had, in effect decided that a statute was liable to be struck down as infringing the guaranteed fundamental right, on the ground that the compensation provided thereby was inadequate. Though the framers of the Constitution believed that the scope for judicial review of compensation for acquisition of land would be very limited, the decision in *Bela Banerjee's*¹³ case showed that this belief was not well-founded.

4.19. The said decision had a far reaching effect and was one of the main causes that led to the enactment of the Constitution (Fourth Amendment) Act, 1955. This decision and Subodh Gopal Bose's case¹⁴ were likely to give rise to formidable problems, when the principles specified by the legislature as well as amounts determined by the application of those principles were declared justiciable. The Government came to the conclusion that those observations and direction by the Court placed serious restrictions and obstacles in giving effect to the Directive Principles of State Policy incorporated in Article 39 of the Constitution. Government, therefore, decided to amend the Constitution and the Constitution (Fourth Amendment) Act was the result. It was passed and came into force on April 27, 1955.

. (1964) 6 S.C.R. 936.

¹⁰. AIR 1965, S.C. 1096. In *N. B. Jeejeebhoy's* case the Supreme Court held that "ascertainment of compensation on the basis of the value of the lands acquired as on January 1, 1948, and not as on the date on which the notification under s. 4 of the Land Acquisition Act was issued under the provisions of the Land Acquisition (Bombay Amendment) Act, 1948, was arbitrary and violated s. 299(2) of the Government of India Act, 1935, relating to compensation. In *N. B. Jeejeebhoy's* cases (3) the Court was dealing with a preconstitution statute and it was held that the principle on which compensation was to be paid under s. 299(2) of the Government of India Act, 1935, and Article 31(2) of the Constitution, were the same, and a different interpretation giving a more restricted meaning to s. 299(2) of the Government of India Act, 1935 could not be given.

¹¹. In *Union of India v. Kamalabai Harjeevandas Parekh* and others (12) it was held that compensation admissible under the Requisitioning and Acquisition of Immovable Property Act, 1952, enacted on March 14, 1952, at the market value of the property as at the date of acquisition or twice the market value of the property at the time of requisitioning of that property under r. 75-A(1) of the Defence of India Rules, whichever was less, was void as infringing Art. 31(2) of the Constitution.

¹². *Ibid.*

¹³. *Ibid.*

¹⁴. According to Subodh Gopal's case (9) the law providing for acquisition or extinction of interest of private owners in properties not governed by Art. 31A and Art. 31B read with the Ninth Schedule was liable to be struck down unless the law provided for payment to the expropriated owner compensation which was a just equivalent.

Compensation—its meaning and Justiciability after the Fourth Amendment

4.20. Under Article 31(2) of the Constitution as amended by the Constitution (Fourth Amendment) Act, 1955, no property can be compulsorily acquired except under a law which provides for compensation for the property acquired and either fixes the amount of compensation or specifies the principle on which, and the manner in which compensation is to be determined and given. The second limb of the provision says that *no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate*.

4.21. Article 31(2) as amended came up for consideration before the Supreme Court in *Vajravelu's case*. Though the Court held that the principles of compensation laid down by the impugned statute (the Madras Land Acquisition Amendment Act) were not open to question, it observed that when the Constitution (Fourth Amendment) Act, 1955 uses the word "compensation" which had been interpreted by the Court in *Bela Banerjee's*¹⁵ case to mean "a just equivalent", the Legislature must be presumed to have used the word in the sense which had been given to it in *Bela Banerjee's case*. It was in essence an attempt to direct the legislature and the executive to make a judicial and equitable approach, and not an arbitrary approach in assessing compensation. The spirit of the Constitution was sought to be retained in spite of the words Article 31(2) as amended being against it. The observations in *Vajravelu's case* were contrary to the plain words of the Fourth Amendment, as the concept of compensation as a "just equivalent" was abandoned when the jurisdiction of the Court to go into the question of adequacy of compensation was excluded.

4.22. The remarks in *Vajravelu's case* influenced the course of decision of the Supreme Court in the *Metal Corporation Limited's case*^{16a}. In the *Metal Corporation Ltd.'s case* the facts were that the Metal Corporation of India (Acquisition of Undertaking) Act, 1965, was enacted for acquiring in the public interest, the undertaking of the Metal Corporation of India. The Act provided that the Corporation was to vest in the Central Government on the commencement of the Act and that in the absence of an agreement between the Government and the Corporation, compensation payable to the Corporation was to be an amount equal to the sum total of the value of the properties and assets of the Corporation on the date of the commencement of the Act calculated in accordance with the provisions of paragraph II of the Schedule to the Act, less the liabilities on the said date, calculated in accordance with the provisions of Paragraph III of the Schedule. One of the clauses laying down principle of compensation viz., clause (b) of

paragraph II was in two parts. The first part provided for the valuation of plant, machinery or other equipment which had not been worked or used and were in good condition, and the second part provided for the valuation of any other plant, machinery, or equipment. The former, according to the Schedule, had to be valued at the actual cost incurred by the Corporation in acquiring them, and the latter at the written-down value determined in accordance with the provisions of the Income-tax Act, 1961. The validity of the Act was challenged, and the Supreme Court held that the Act contravened Art. 31(2) of the Constitution and was, therefore, void.

4.23. In this case, the Court had held that the cost price of machinery purchased about ten years ago was a consideration not relevant for fixing compensation for its acquisition in 1965. According to the Court, the principles must be such as to enable the ascertainment of its price at or about the time of its acquisition. The Court observed that the doctrine of written-down value accepted in the Income-tax Law could not afford any guide for ascertaining the compensation for the used machinery acquired under the Act. The Court, also held that the doctrine of inherent worth of a machinery had no relevance in the matter of giving compensation for its acquisition at a particular point of time, for the simple reason that the worth of an article depends upon the market conditions existing at the time of its acquisition.

State of Gujarat v. Shantilal Mangaldas

4.24. In the latest case of *State of Gujarat v. Shantilal Mangaldas*¹⁷ and others decided on 13-1-1969, the Supreme Court has observed that the case of *Metal Corporation of India Limited* was wrongly decided and that the same must be overruled. The Court has now taken the view that the principles for determining compensation in the case of *Metal Corporation* were relevant to the determination of compensation payable in respect of unused machinery in good condition, and used machinery and that the compensation was not illusory.

4.25. In the above case, the declaration of intention to make a town planning scheme was made on April 18, 1927 under the Bombay Town Planning Act 1 of 1915, and the plan which started that year continued under the 1955 Act. A plot of respondent's land measuring 18,219 square yards was acquired and the plot was reconstituted into two plots. One of these plots measuring 15,403 square yards was reserved for the use of the local authority. On August 23, 1957 the respondent was informed of the amount of compensation awarded to him for the plot reserved for the use of the local authority in accordance with Section 67.

¹⁵. (1965) I SCR 614.

¹⁶. 1954 SCR 558.

^{16a}. AIR 1967 SC 637.

¹⁷. Civil Appeal No. 1377 of 1968 decided on 13th January, 1969.

4.26. The High Court of Gujarat had held that although a provision for awarding compensation on the basis of market value under s. 67 of the Act is a sufficient specification of a principle of compensation within the meaning of Article 31(2), the Act was still not saved for two reasons: (1) that there was no principle for compensating an owner of land to whom no reconstituted plot was allotted; and (2) that payment provided by the Act in satisfaction of the claim to land statutorily expropriated based on the market value of the land at the date of the declaration of intention to make a scheme was not payment of compensation guaranteed by Art. 31(2) because compensation based on the market value may be sufficient specification of principles of compensation within the meaning of Art. 31(2) only if it is a 'just equivalent' of the land expropriated and payment computed on the market value of a date many years before the date on which the land is acquired is inconsistent with the constitutional guarantee under Art. 31(2). The High Court in coming to this conclusion felt itself bound by the observations made in the judgments of the Supreme Court in *P. Vajravelu Mudaliar vs. The Special Deputy Collector Madras*¹⁸; *The State of West Bengal v. Mrs. Bela Banerjee and others*¹⁹; *N. B. Jeejeebhoy v. Assistant Collector, Thana Prant, Thana*²⁰; and *Union of India v. Metal Corporation of India Limited and another*²¹

4.27. The respondent contended that the Act so far as it provided (1) for adjustment of market value of land at the date of declaration of intention of making a scheme against market value of the land which goes to form the reconstituted plot, if any, did not specify principles on which the compensation is to be determined and given; and (2) for giving the value of land, not on the date of extinction of interest of the owner, but on the footing of the declaration of the intention to make a scheme (as in this case declaration was made in 1927 and final scheme published in 1957), does not provide for compensation within the meaning of Art. 31(2) because it is not a 'just equivalent' of the land expropriated.

4.28. While rejecting the above contentions, the Court has in unambiguous language declared that compensation fixed or determined on principles specified by the Legislature cannot be permitted to be challenged on the somewhat indefinite plea that it is not just or fair equivalent. In this context,

the following observations of the Supreme Court are worth noting. Shah J. observed:—

"It clearly follows from the terms of Art. 31(2) as amended that the amount of compensation payable, if fixed by the Legislature, is not justiciable, because the challenge in such case, apart from a plea of abuse of legislative power, would be only a challenge to the adequacy of compensation. If compensation fixed by the Legislature—and by the use of the expression 'compensation' we mean what the legislature justly regards as proper and fair recompense for compulsory expropriation of property and not something which by abuse of legislative power though called compensation is not a recompense at all^{21a} or is something illusory—is not justiciable, on the plea that it is not a just equivalent of the property compulsorily acquired, is it open to the Courts to enter upon an enquiry whether the principles which are specified by the Legislature for determining compensation do not award to the expropriated owner a just equivalent? In our view, such an enquiry is not open to the Courts under the statutes enacted after the amendments made in the Constitution by the Constitution (Fourth Amendment) Act. If the quantum of compensation fixed by the Legislature is not liable to be canvassed before the Court on the ground that it is not a just equivalent, the principles specified for determination of compensation will also not be open to challenge on the plea that the compensation determined by the application of those principles is not a just equivalent. The right declared by the Constitution guarantees that compensation shall be given before a person is compulsorily expropriated of his property for a public purpose. What is fixed as compensation by statute or by the application of principles specified for determination of compensation is guaranteed; it does not mean, however, that something fixed or determined by the application of specified principles which is illusory or can in no sense be regarded as compensation must be upheld by the Courts, for, to do so, would be to grant a charter of arbitrariness, and permit a device to defeat constitutional guarantee. But compensation fixed or determined on principles specified by the Legislature cannot be permitted to be challenged on the somewhat indefinite plea that it is not a just or fair equivalent. Principles may be

¹⁸. (1965) I SCR 614.

¹⁹. 1954 SCR 558.

²⁰. AIR 1965 SC 1096.

²¹. AIR 1967 SC 637.

^{21a}. In the latest case of *R.C. Cooper and Others v. Union of India* (known as the Banks Nationalisation Case) Writ Petitions No. 222, 298 and 300 of 1969, decided on 10-2-1970, the Supreme Court has pointed out that the money value at the date of expropriation of what is given as compensation must be considered in judging whether the law provides for compensation. If the statute providing for compensation devises a scheme for payment of compensation by giving it in the form of bonds, and the present value of which is determined to be given is thereby substantially reduced, the statute impairs the guarantee of compensation. According to the Court, if the rate of interest compared with the ruling commercial rate is low, it will reduce the present value of the bond. The Court observed that the right to compensation cannot be converted into a loan on terms which do not fairly compare with the prevailing commercial terms.

challenged on the ground that they are irrelevant to the determination of compensation, but not on the plea that what is awarded as a result of the application of those principles is not just or fair. A challenge to a statute that the principles specified by it do not award a just equivalent will be in clear violation of the constitutional declaration that inadequacy of compensation provided is not justiciable."

4.29. The above decision of the Court is thus a great land-mark in the history of the construction of Art. 31(2) as amended by the Constitution (Fourth Amendment) Act, 1955.

4.30. The Fourth Amendment of the Constitution was expressly made to get over the effect of the earlier cases which had defined compensation as just equivalent. As pointed out by Chief Justice Hidayatullah in his concurring judgment, it is certainly out of the question that the adequacy of compensation (apart from compensation which is illusory or proceeds upon principles irrelevant to its determination) should be questioned after the amendment of the Constitution. The remarks in *P. Vajravelu's*²³ case are, therefore, treated as obiter and not binding on the Court and the *Metal Corporation case*²⁴ has been over-ruled on the ground that it was wrongly decided^{25a}

Whether the Law of Acquisition must satisfy the test of reasonable restrictions

4.31. Legislation with regard to compulsory acquisition of property has been attacked in the courts mainly with reference to Articles 14, 19 and 31 of the Constitution. We have examined the principles laid down by the Courts with reference to Article 31. The next question which arises for consideration is whether the law of acquisition must also satisfy the test of reasonable restriction as envisaged by Article 19(5).

4.32. Article 19(1)(f) of the Constitution guarantees to the citizens the Fundamental Right to acquire hold and dispose of property subject to reasonable restrictions that may be imposed under Article 19(5) in the interest of the general public or for the protection of the interest of any Scheduled Tribe. Both Articles 31(2) and 19(1)(f) re-

late to property. Both appear in Part III of the Constitution under Fundamental Rights. While striking down as constitutionally invalid the Banking Companies (Acquisition and Transfer of Undertakings) Act, 22 of 1969, the Supreme Court has, by a majority of 10 to 1, over-ruled its earlier view that Article 31(2) and Article 31(2A) constituted a self-contained code relating to acquisition and requisition of property. The Court has now held that a citizen may claim in an appropriate case that the law authorising compulsory acquisition of property imposes fetters upon his right to hold property which are not reasonable restrictions in the interests of the general public. It is immaterial that the scope for such challenge may be attenuated because of the nature of the law of acquisition which, providing as it does for expropriation of property of the individual for public purpose, may be presumed to impose reasonable restrictions in the interests of the general public²⁶. While over-ruling the earlier view that Articles 19(1)(f) and 31(2) are mutually exclusive, the Court pointed out that clause (5) of Article 19 and Clauses (1) and (2) of Article 31 are parts of a single pattern: Article 19(1)(f) enunciates the basic right to property of the citizen and Article 19(5) and Clauses (1) and (2) of Article 31 deal with limitations which may be placed by law, subject to which the Right may be exercised. The Court, therefore, expressed its inability to hold that the challenge to the validity of provision for acquisition is liable to be tested only on the ground of non-compliance with Article 31(2).

4.32(A). In some of its earlier cases, the Supreme Court had held that Article 19(1)(f) and Article 31(2) were mutually exclusive in their operation. In *A. K. Gopalan's case*²⁷, Das, J. suggested that if the capacity to exercise the right to property was lost, because of lawful compulsory acquisition of the subject of that right, the owner ceased to have that right for the duration of the incapacity. In later cases²⁸, it was observed by the Supreme Court that Article 19(1)(f) read with Clause (5) postulates the existence of property which can be enjoyed and over which rights can be exercised. It was, therefore, held in these cases that the substantive provisions of a law relating to acquisition of

²³ *Ibid.*

²⁴ AIR 1967 SC 637.

^{25a} In *R. C. Cooper & others v. Union of India*, the Supreme Court has, while explaining the ratio decided in the earlier cases of *P. Vajravelu* and *Shantilal Mangaldas*, reiterated that the principle specified by the law for determination of compensation is beyond the pale of challenge if it is relevant to the determination of compensation and is a recognised principle applicable in the determination of compensation for property compulsorily acquired and the principle is appropriate in determining the value of the class of property sought to be acquired. However, the Court expressed its inability to hold that a principle specified by the Parliament for determining compensation of the property to be acquired is conclusive. "If that view be accepted", said the Court, "the Parliament will be invested with a charter of arbitrariness and by abuse of legislative process, the Constitutional guarantee of the right to compensation may be severely impaired." However, if several principles are appropriate and one is selected for the determination of the value of the property to be acquired, selection of that principle to the exclusion of other principles is not, according to the Court, open to challenge, for the selection must be left to the wisdom of the Parliament and the Court will not be justified in entertaining the contention that out of the two appropriate methods, one more generous to the owner should have been applied by the legislature.

²⁶ *R. C. Cooper & others v. Union of India* (known as *Bank Nationalisation Case*)—Writ Petitions Nos. 222, 298 and 300 of 1969 decided on 10-2-1970.

²⁷ (1950) SCR 88.

²⁸ (a) *State of Bombay v. Bhanji Munji & Another*—(1955) 1 SCR 777.

(b) *Babu Barkya Thakur v. the State of Bombay*—(1961) SCR. 128.

(c) *Smt. Sitabai Debi and Anr v. State of West Bengal and another*—(1967) 2 SCR. 940.

property were not liable to be challenged on the ground that they impose unreasonable restrictions on the Right to Property.

4.32(B). In the case of *State of Gujarat v. Shantilal Mangaldas and Others*²⁷, the Supreme Court again considered the applicability of Article 19(1) (f) in relation to acquisition and requisition of property under the authority of law mentioned in Article 31(2). In this case, the plea of respondents that payment of market value assessed on the current price on a date many years before the date on which the title of the owner is extinguished was unreasonable was rejected by the Court. In doing this, the Court followed its earlier decision in *Smt. Sita Bati v. State of West Bengal*^{27a} and reiterated that a law made under clause (2) of Art. 31 was not liable to be challenged on the ground that it imposed unreasonable restrictions upon the right to hold or dispose of property within the meaning of Article 19(1) (f) of the Constitution.

4.32(C). Since the amendment by the Constitution (Fourth Amendment) Act, 1955, it has been held that Clauses (1) and (2) of Art. 31 deal with different subject matters. In *Kavalppara Kottarathil Kochuni's case*^{27b}, Subba Rao, J. delivering the judgment of the majority of the Supreme Court observed that Cl. (2) of Art. 31 alone deals with compulsory acquisition of property by the State for a public purpose, and not Art. 31(1), and he proceeded to hold that the expression "authority of law" means authority of a valid law, and on that account validity of the law seeking to deprive a person of his property is open to challenge on the ground that it infringes other fundamental rights, e.g., under Art. 19(1)(f). With the decision in *Kavalppara Kottarathil Kochuni's case* there arose two divergent lines of authority—(1) "authority of law" in Art. 31(1) is liable to be tested on the ground that it violates other fundamental rights and freedoms including the right to hold property guaranteed by Art. 19(1)(f); and (2) "authority of law" within the meaning of Art. 31(2) is not liable to be tested on the ground that it impairs the guarantee of Art. 19(1)(f) in so far as it imposes substantive restrictions—though it may be tested on the ground of impairment of other guarantees.

4.32(D). While examining the rationale of the two lines of authority in *R. C. Cooper and others v. Union of India*^{27c}, known as *Banks Nationalisation case*, the Supreme Court has pointed out that the assumption in *A. K. Gopalan's case* that certain Articles in Constitution exclusively deal with specific matters and in determining whether there is

any infringement of the individual's guaranteed rights, the object and the form of the State action alone need be considered and effect of the laws on fundamental rights of the individuals in general will be ignored, cannot be accepted as correct. The Court has, therefore, concluded that the validity of 'law' which authorises deprivation of property under Article 31(1) and 'a law' which authorises compulsory acquisition of property for a public purpose under Article 31(2) must be adjudged by the application of the same tests. The result is that the Law of Acquisition of Land will have to satisfy the requirements of both the Articles viz., 31(2) and 19(5)^{27d}.

Law of Acquisition must satisfy the requirements of Art. 14 also

4.33. It is well settled that legislation relating to compulsory acquisition of property which is not covered by Clauses (4), (5) and (6) of Article 31, and Art. 31-A and Art. 31-B read with Ninth Schedule must satisfy the requirements of Article 31(2) as well as Article 14 of the Constitution. Article 14 provides that the State shall not deny to any person equality before the law or equal protection of the law. Article 14 combines the English doctrine of rule of law with the equal protection concept of the Fourteenth Amendment to the US Constitution. Article 14 condemns discrimination not only by substantive law but also by a law of procedure. It forbids class legislation but does not forbid reasonable classification. A law of land acquisition which makes unjust discrimination between owners of land similarly situated would be violative of Article 14. Thus in *Vajravelu's case* cited above, the Land Acquisition (Madras Amendment) Act, 1961 was struck down under Article 14, and not under Article 31. It was held that the principle of compensation prescribed by the Madras Amendment Act did not offend Art. 31(2). However, the Amending Act had provided for acquisition of land, for a housing scheme on payment of lesser compensation than what the owner would get for the same land or a similar land if it is acquired for a public purpose like hospital or University under the Principal Act. The Amending Act was struck down by the Supreme Court on the ground that two laws were in force in the State providing for acquisition of land, one, S. 23 of the Land Acquisition Act of 1894 for acquisition of land generally and the other, the provisions of the Amending Act which applied only to the acquisition of land for housing purposes. The Court held that there was no reasonable classification to justify this distinction²⁸. The Amending Act treated per-

²⁷. AIR 1969 SC 634.

^{27a}. (1967) 2 SCR 940.

^{27b}. (1960) 8 S.C.R. 887.

^{27c}. Writ petitions No. 222, 298 and 300 of 1969 decided on 10-2-1970.

^{27d}. In his Dissenting Judgement, Ray, J. however reiterated the old view that article 19(1)(f) does not have any application to acquisition or requisition of property for a public purpose under authority of a law which provides for compensation as mentioned in article 31(2).

²⁸. The acquisition was struck down in *P. Vajravelu Mudaliar's case* because the State Government could resort to one of the two methods of acquisition—the Land Acquisition Act, 1894, and the Land Acquisition (Madras Amendment) Act, 1961—and no guidance was given by the legislature about the statute which should be resorted to in a given case of acquisition for a housing scheme. Power to choose could, therefore, be exercised arbitrarily. (See observations of Shah J in *State of Gujarat v. Shantilal*).

sons similarly situated differently by the mere accident that the land of some persons was required for purposes of housing and of others for other purposes. Thus, if waste land was acquired as suitable for housing, it could equally be acquired for purposes of building a network of hospital or for buildings required by a University and the mere fact that it was wanted for one purpose rather than another was not relevant for determining compensation for land, which was of the same quality and value. Even the financial position or the number of persons owning the land was held to have no relevance, for in both the cases land could be acquired from rich or poor, from one individual or from a number of persons.

4.34. In *Deputy Commissioner v. Durga Nath Sarma*²⁹ the impugned Act provided for acquisition of land for the public purpose of carrying out works or other development measures in connection with flood control or prevention of erosion on payment of compensation for the land assessed on the basis of a multiple of the annual land revenue, and for the buildings, a sum equivalent to the sale proceeds of the materials of the same plus 15 per cent thereof. This Act enabled taking of land under this Act on payment of nominal compensation, as stated above, while an adjoining land could only be taken for some other public purpose under the Land Acquisition Act of 1894 on payment of adequate compensation alone. It was held by the Supreme Court that the classification of land required for public purposes under this Act and land required for other public purposes had no reasonable relation to the object sought to be achieved viz., acquisition of the land by the State. The Court observed that there was unjust discrimination between owners of land similarly situated by the mere accident of some land being required for other purpose; therefore, the Act was violative of Article 14.

4.35. In *Balammal v. State of Madras*³⁰ cl. (2) of the Schedule to the Madras City Improvement Trust Act, 1945 which had provided for excluding the payment of 15% of the market value as a solatium for the land acquired for the purposes of the Act, was struck down by the Supreme Court as violative of Article 14 of the Constitution. It was observed by the Court that the "owner of land is ordinarily entitled to receive the solatium in addition to the market value, for compulsory acquisition of his land, if it is acquired under the Land Acquisition Act, but not if it is acquired under the Madras City Improvement Trust Act. A clear case of discrimination which infringes the guarantee of equal protection of the laws arises, and the provision which is more prejudicial to the owners of the land which are compulsorily acquired must, on the decisions of this court, be deemed invalid."

Progressive reduction of compensation on the basis of slab system

4.36. The question whether the legislature can prescribe principles by which the amount of compensation is cut down progressively was considered by the Supreme Court in *K. Kunhikonam v. State of Kerala*³¹. In this case the Kerala Agrarian Relations Act, 1961 had provided in S. 52, Schedule II, that the first Rs. 15,000 of the compensation amount would be paid in full and thereafter there would be a reduction of 5 per cent in each slab of Rs. 10,000 till the compensation amount exceeds Rs. 1,45,000 and thereafter the amount of compensation would be reduced by 70 per cent. Similarly in respect of the compensation payable under S. 64 for excess land surrendered it was provided that on the first Rs. 15,000 the compensation would be paid at 60 per cent and thereafter the compensation would be reduced by 5 per cent for each slab of Rs. 15,000 till the amount exceeds Rs. 1,75,000 and thereafter the compensation would be reduced by 75 per cent. The Court, per majority held that these provisions were violative of Article 14 of the Constitution for the following reasons:—

(1) That there could be no comparison between the slab system of income-tax rates and the cuts imposed in this case because taxation is a compulsory levy from each individual for the purpose of the maintenance of the State and it may be reasonably expected that a rich man may be required to make a contribution which may be higher than what may be proportionately due from his income for that purpose as compared to a poor man; therefore, this principle cannot be applied in a case where a person is deprived of his property under the power of eminent domain for which he is entitled to compensation and there is no reason why when two persons are deprived of their property one richer than the other, they should be paid at different rates when the property of which they are deprived of is of the same kind and differs only in extent; and

(2) that neither there is rational classification which would justify different cuts based simply on the amount of compensation worked on the basis of market value nor this kind of discrimination in the payment of compensation can be justified on the objects and purposes of the Act viz., granting of rights to cultivating tenants and to provide land for the landless and to those who have little land by taking excess land from those who have large tracts of land so that peasant proprietorship may increase with consequent increase in production due to greater interest of the cultivator in the soil.

²⁹. C. A. No. 1100 of 1966 decided on 15-9-1967.

³⁰. C. A. Nos. 489 etc. of 1966 decided on 23-4-1969.

³¹. AIR 1962 S. C. 723 (738-39).

4.37. In this case the Supreme Court approved the decision of the Patna High Court in *Kameshwar Singh v. State of Bihar* wherein the High Court had struck down under Article 14 the provisions of the Bihar Land Reforms Act, 1950, which had provided that the land-owner having the smallest net income below Rs. 500/- was to get twenty-times the net income as compensation while the land-owner having the largest net income i.e. above Rs. 1,00,000 was to get only three times of the net income. There were other intermediate slabs also providing different multiples for different amounts of net income."

4.38. The view was taken in *K. Kunhikonam's* case cited above was reiterated by the Supreme Court in *A. P. Krishnaswami Naidu v. State of Madras*³⁴ for striking down the provisions of the Madras Land Reforms (Fixation of Ceiling on land) Act, 1961.

4.39. In this Act, the provision was that first the net annual income was to be arrived at and thereafter compensation was provided for slabs for Rs. 5,000 each of net income. For the First slab of Rs. 5000/ the compensation was 12 times the net annual income, for the second slab of Rs. 5,000/ it was 11 times, for the third slab or Rs. 5,000/ it was ten times and thereafter it was nine times.

4.40. The Court held, for the reasons given in the case of *Kunhikonam* that the provisions contained in the said Act with respect to compensation were discriminatory and violated Article 14 of the Constitution.

Directive Principles of State policy

4.41. The law of compulsory acquisition of land will thus have to satisfy the requirements of Article 31(2), 14 and 19 as interpreted by the Supreme Court *inter alia* in the case cited above. However, Article 31-A saves laws providing for acquisition of estates etc. on ground of contravention of Articles 31, 19, and 14. Article 31-B validates certain Acts and regulations specified in the Ninth Schedule to the Constitution. Before we proceed to deal with the scope of legislation protected by these Articles we would like to state in brief here the socio-economic directives of the Constitution which prompted the I, IV and XVII amendments of Article 31, and the insertion of Article 31(A), 31(B) and the Ninth Schedule.

4.42. The Preamble of our Constitution proclaims *inter alia* that the people of India have resolved "to secure to all its citizens justice, social, economic and political and equality of status and of

opportunity". Economic justice to all citizens of the country could not be achieved unless the right to property was qualified. Articles 38, 39 and 48 contained in Part IV of our Constitution enunciate some of the important Directive Principles of State Policy which have a special relevance in relation to legislation involving land Reforms. These are:—

- (1) "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

(Art. 38)

- (2) The State shall, in particular, direct its policy towards securing—

- (a) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (b) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(Art. 39)

4.43. Article 48 states that the State shall endeavour to organise agriculture on modern and scientific lines. Clauses (a) to (f) of Article 39 briefly but effectively lay down the basic philosophy and objectives of democratic socialism which is enshrined in the Preamble and which is the underlying spirit of the Directive Principles. These Directive Principles of State Policy, though not enforceable by any Court are "nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. In its Resolution of December, 1954, Parliament declared *inter alia* that the objective of the economic policy should be a socialistic pattern of society. The terms 'socialistic pattern of society' was commented upon and elaborated in the Second Five Year Plan and a long-term strategy for economic advance was formulated based on that concept. The accent of the socialistic pattern of society is on the attainment of positive goals, the raising of living standards, the enlargement of opportunities for all, the promotion of enterprise among the disadvantaged classes and the creation of a sense of partnership among all sections of the community.³⁵

4.44. With a view to achieving the objective of establishing a socialistic pattern of society in the State within the meaning of Article 38 and 39 of

³³. AIR 1951 Pat. 91(SB).

³⁴. It may be mentioned here that the decision was given before the Constitution (First Amendment) Act, adding article 31-A and the Ninth Schedule to the Constitution was passed. The Bihar Land Reforms Act was the first enactment specified in the Ninth Schedule and is now protected against an attack on the ground of contravention of Article 14, 19, and 31,

³⁵. AIR 1964 SC 1515 (1518-19).

³⁶. See Fourth Five Year Plan (1969-74) Draft—para. 1.5.

the Constitution, it became necessary for the State to carry out certain pressing agrarian reforms. Land Reform was one of the cardinal objectives stressed by the political group that came in power and the abolition of Zamindaris became its immediate task on the assumption of power. In the Constituent Assembly, the Congress was satisfied with the Report of the Congress Agrarian Reforms Committee, 1949, which declared itself in favour of the elimination of all intermediaries between the State and the tiller, and imposition of prohibition against subletting.

4.45. The land policy to be pursued by State Governments as part of the National Plan was set out in the First Five Year Plan and elaborated in the Second and Third Plans. It provided the framework for legislative and administrative action in different States. The objectives formulated were to remove such motivational and other impediments to increases in agricultural production as arise from the agrarian structure and to eliminate elements of exploitation and social injustice within the agrarian system. Among the principal measures recommended were abolition of intermediary tenures, reforms of the tenancy system including fixation of fair rent and assurance of security of tenure, transfer of ownership right to tenants, and imposition of ceilings on ownership of land together with distribution of surplus land to tenants, those with uneconomic holdings and landless agriculturists, settlement of landless agriculture workers, consolidation of holdings and prevention of fragmentation.³⁸ Land to the tiller is the cardinal feature of the policy of land reforms. It is a matter of general knowledge that it became necessary to add Articles 31-A and 31-B with retrospective effect by the Constitution (First Amendment) Act, 1951 because it was realised that legislative measures adopted by certain States for giving effect to the above-mentioned policy of agrarian reform which was accepted by the party in power, had to face a serious challenge in the courts of law on the ground that they contravened the fundamental Rights guaranteed to the citizens by Part III. These measures had been passed in Bihar, Uttar Pradesh and Madhya Pradesh, and their validity was impeached in the High Courts in the said three States. The Patna High Court had held that the Bihar Land Reforms Act, 1950, was void as it accorded differential treatment to land owners in the matter of compensation. Parliament acted swiftly to override that judicial verdict by Constitutional Amendment.

First Amendment

4.46. The Constitution (First Amendment) Act, 1951, was enacted with a view to eliminate all litigation challenging the validity of legislation for the abolition of proprietary and intermediary interests in agricultural lands on the ground of contravention of the Fundamental Rights contained in Part III

of the Constitution. To make this purpose effective, Article 31A was incorporated in the Constitution with retrospective effect, and Article 31B and the Ninth Schedule were added placing certain Acts and Regulations immune from the challenge that they were inconsistent with or took away or abridged any of the Fundamental Rights conferred by any provision of Part III.

Fourth Amendment

4.47. Article 31A was further amended with retrospective effect by the Constitution (Fourth Amendment) Act, 1955. The object of this amendment was to take out not only laws relating to the abolition of Zamindari but also other items of agrarian and social welfare legislation, which affect proprietary rights, altogether, from the purview of Articles 14, 19 and 31. The object was thus explained in the Statement of Objects and Reasons :—

“It will be recalled that the zamindari abolition laws which came first in our programme of social welfare legislation were attacked by the interests affected mainly with reference to Articles 14, 19 and 31, and that in order to put an end to the dilatory and wasteful litigation and place these laws above challenge in the courts, Articles 31A and 31B and the Ninth Schedule were enacted by the Constitution (First Amendment) Act. Subsequent judicial decisions interpreting Articles 14, 19 and 31 have raised serious difficulties in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines, e.g., the following :—

- (i) “While the abolition of zamindaries and the numerous intermediaries between the State and the tiller of the soil has been achieved for the most part, our next objectives in land reforms are the fixing of limits to the extent of agricultural land that may be owned or occupied by any person, the disposal of any land held in excess of the prescribed maximum, and the further modification of the rights of land owners and tenants in agricultural holdings.”

4.48. The scope of Article 31-A was extended so as to cover inter alia essential legislation of this category.

Land Reforms legislation and its implementation

4.49. Legislation for abolition of intermediary tenures was enacted and largely implemented during the first two Plan periods. As regards tenancy reforms, comprehensive legislation has been enacted in Gujarat, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Uttar Pradesh, the Telengana area of Andhra Pradesh, Delhi, Himachal Pradesh, Manipur and Tripura and also Mysore, Orissa and Mahe.

³⁸ Fourth Five Year Plan (1969-74) Draft—para 6.69.

Interim protection has been provided in other States. Progress has been made in the implementation of the provisions relating to tenants' right of purchase. As a result, three million tenants, sub-tenants and share-croppers have acquired ownership of more than 2.8 million hectares on payment of purchase price. A ceiling on existing holdings had been imposed in Assam, Jammu and Kashmir, Kerala, West Bengal, Delhi, Himachal Pradesh, Manipur and Tripura during the first two Plans. Since 1961, legislation regarding ceilings has been enacted in the remaining States. Land to the extent of about one million hectares has been declared as in excess of ceiling limits or taken possession of by Government for settling tenants, uneconomic holders and landless agriculturists. As against 3.3 million hectares consolidated during the Second Plan, 17.5 million hectares have been consolidated since 1961 mainly in Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Rajasthan, Gujarat and Maharashtra."

4.50. Security of tenure for the tiller is crucial to the whole scheme of land reforms. It enables him to obtain various inputs and to participate effectively in agricultural production programmes. Legislation for security of tenure as well as legislation enabling tenants to acquire ownership rights in respect of non-resumable areas has been enacted in a number of States.*

4.51. Article 31A applies only to a law made for acquisition by the State of any "estate" or any rights therein or for extinguishment or modification of rights, in such acquisition, etc. was connected with agrarian reforms. The Punjab Security of Land Tenure Act, 1953, and the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956, which amended the Bombay Act of 1948 are some of the examples of such legislation. The Punjab Act limited the area of land for self-cultivation, gave the tenants' rights to purchase land with them and in this way modified the rights of landlords. It also released excess land for re-distribution. This was regarded to be agrarian reform and thus within the protection of Article 31-A." Similarly, the Bombay Tenancy and Agricultural Lands Act, sought to distribute equitably the lands between the landless and the tenants by way of compulsory purchase of all surplus lands by tenants in possession thereof from April 1, 1957 (known as the Tillers' Day). The fundamental idea was the prevention of concentration of lands in the hands of a few land-holders. No doubt, the redistribution of land so that few men should not monopolise it is the cardinal principle on which agrarian economy

in a socialist pattern of society rests. The Act which was designed to bring such distribution of ownership and control of agricultural lands as best to subserve the common good thus eliminating concentration of wealth and means of production to the common detriment achieves the objective of establishing a socialistic pattern of society in the State within the meaning of Articles 38 and 39 of the Constitution."

4.52. In *Ranjit Singh v. State of Punjab*,¹⁰ the Supreme Court gave a comprehensive meaning to the expression "agrarian reform" so as to include provisions made for the development of all rural economy. In the consolidation proceedings started under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) as amended by Act 27 of 1960, portions of lands from those commonly owned by the proprietors had been reserved for the village panchayat, and other portions had been reserved either for non-proprietors or for the common purposes of the villagers. The provisions of the Punjab Village Common Lands (Regulation) Act (1 of 1954) resulted in the vesting of all rights of management in the 'Shamilatdeh', in the village Panchayat and in the land in the 'abadi deh' under a house owned by a non-proprietor, in the non-proprietor. The proprietors were not paid compensation for the lands and it was the taking away and allotment of these lands which were the subject of challenge. The court held that consolidation of holding is really nothing more than proper planning of rural areas and this planning must of necessity take note of vacant and waste lands. Apropos, the Act before it, the Court observed :

"The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few, on the other, but envisages also the raising of economic standards and bettering rural health and social conditions."

On this reasoning, it was held that provisions for the assignment of lands to village panchayats for the use of the general community, or for hospitals, schools, manure pits, tanning grounds, ensure for the benefit of rural population and must be considered to be essential part of the redistribution of holdings and open lands. Similarly the settling of a body of agricultural artisans such as the village carpenter, blacksmith, tanner, farrier, wheelwright,

* Fourth Five Year Plan -1969-74—Draft para 6-70.

* While in some States such as in Uttar Pradesh no resumption was permitted to landlords and tenants have substantial rights in respect of their entire holding. In other States such as Gujarat, Maharashtra, Kerala, Madhya Pradesh, Mysore, Rajasthan, Orissa, Manipur and Tripura, landlords were permitted to resume land for personal cultivation within a specified period in certain cases; in respect of the remaining area the tenants got substantial rights. In Punjab and Haryana the landlords' rights of resumption is subject to the condition that the tenants are given alternative land up to the prescribed limit for cultivation. In other States, the tenant and share-croppers have only interim protection.—Fourth Five Year Plan 1969-74 Draft-Paras 6-71 and 6-72.

¹⁰. *Atma Ram v. State of Punjab*, A.I.R. 1939, S.C. 519.

¹¹. *Shri Ram Ram Narayan Madhl, v. State of Bombay*, AIR 1961, S.C. 288.

¹². A.I.R. 1965, S.C. 632.

barber, washerman etc. is a part of rural planning and can be comprehended in a scheme of agrarian reforms. In the course of the Judgment, the Court speaking through Hidayatullah, J. observed :

"It is a trite saying that India lives in villages and a scheme to make villages self-sufficient cannot but be regarded as part of the large reforms which consolidation of holdings, fixing of ceiling on lands, distribution of surplus lands, and utilising of vacant and waste lands contemplate". Legislation relating to Consolidation of Holdings and Security of Tenure is thus a part

have had to face the test of fundamental rights and rely on Articles 31 and 31-A to save them. By these devices, protection far in excess of these Articles is afforded to them. Ours is the only Constitution in the World which carries a long list of ordinary laws which it protects against itself." Broadly speaking, the legislation protected by the umbrella of the Ninth Schedule relates to abolition of intermediary tenures, jagirs, inams, watans etc. reforms of the tenancy system including fixation of fair rent and terms of security of tenure, transfer of ownership rights to tenants and imposition of ceilings on ownership of land, consolidation of hold-



Political views on quantum of compensation for acquisition and non-justiciability thereof

4.57. At this stage, it would be helpful to us to refer also to the political thinking on the subject of the quantum of compensation. In this context, we would like to refer to some of the official speeches made in Parliament in connection with the Constitution (Fourth Amendment) Bill, as a result of which the adequacy of compensation is made non-justiciable. In support of the Bill, Prime Minister Nehru observed in the Lok Sabha on the 14th March, 1955, as follows:

"In the case of normal land acquisition, the normal laws prevail and the normal full compensation is given, but where all this affects a much larger sphere, the social sphere, then we have provided differently. If we are aiming as, I hope, we are aiming—and we repeatedly say we are aiming—at changes in the social structure, then, inevitably, you cannot think in terms of giving what is called full compensation. Why? Well, firstly, because you cannot do it. Secondly, because it would be improper to do it, unjust to do it, and it should not be done even if you can do it, for the simple reason that all these social matters, laws, etc. are aiming to bring about a certain structure of society different from what it is at present. In that different structure, among the other things that will change is this—the big difference between the 'haves' and the 'have-nots'. Now, if we are giving full compensation, will the 'haves' remain the 'haves' and the 'have-nots' 'Have-nots'; it does not change in shape or form if compensation takes place. Therefore, in any scheme of social engineering, if I may say so you cannot give full compensation, apart from the other patent fact that you are not in a position nobody has the resources—to give it..... We do want to give compensation and we intend to, as we have been doing. But it is patent that the compensation that has to be paid is not a kind of rule of thumb, that the compensation that you give should be the market value of the property. It cannot be done, if you have to think in terms of India as a whole State; you have to think not only of the type of property but the history behind it, the social consequences behind it and all that kind of thing in determining the compensation. The object is not to expropriate, the object is not to injure anybody; the object is a positive object, to bring about a social change for the benefit of the largest number of people doing the least injury to any group or class. Now, in a matter of this kind, therefore, where you have to consider all these factors, political,

social, economic, I submit that the judiciary is not the competent authority. The judiciary is a competent authority to judge—is this the market value or not? They are better competent than Parliament to decide that, but when you have to consider social and economic policies, obviously it would be unfair to cast the burden on the judiciary and it is only Parliament or the State that can do it."⁴⁶

4.58. On 11th April, 1955, the Prime Minister further observed:

"I think the proposition that some Honourable Members on the other side advanced about acquisition or confiscation without compensation seems to me a basically wrong proposition from the point of view of the public good—not from love of property or anything like that. It is basically a wrong proposition. In a particular case if a person misbehaves that is a different matter. I am talking in the broad sense: I do not want anything to be acquired except—normally speaking—on payment of just compensation..... if we have to acquire property I think we should pay just and equitable compensation. I am talking about individual properties."⁴⁷

4.59. Finally, in connection with the motion for the passing of the Constitution (Fourth Amendment) Bill as amended, the Prime Minister stated in the Lok Sabha on 12th April, 1955:—

"The object of this Bill, in fact, is not to give, in the normal case, any illusory or unjust compensation. There may be such cases, I can concede, when dealing with large schemes where compensation may be calculated in a special way. But, even there, it won't be, I hope, unjust, ... this amendment..... removes certain difficulties in our way; it makes it easier for us in future to proceed with our social plans, and at the same time, it does not injure really any interest; and certainly it does not injure the interest of the small producer or small owner."⁴⁸

4.60. Views more or less similar to those of the Prime Minister as quoted above, were expressed in our Parliament by the Minister in the Ministry of Law (Shri Pataskar), by the Minister of Commerce and Industry (Shri Krishnamachari), and by the Minister of Home Affairs (Shri Pant),⁴⁹ in connection with the enactment of the Constitution (Fourth Amendment) Act, 1955:—

4.61. Shri G. B. Pant⁵⁰ said thus in the Rajya Sabha on 17th March, 1955:—

"There are different purposes for which properties have to be acquired. Sometimes, we have

⁴⁶. Lok Sabha Debates, 14th March, 1955.

⁴⁷. See the Lok Sabha Debates of 11th April, 1955.

⁴⁸. See the Lok Sabha Debates of 12th April, 1955, Col. 5116 and 5124.

⁴⁹. See the Lok Sabha Debates of 14th and 15th March and 11th and 12th April, 1955; also the Parliamentary Debates, Rajya Sabha, of 17th and 19th March and 19th and 20th April, 1955.

⁵⁰. See the Parliamentary Debates Rajya Sabha of 17th March, 1955.

to acquire a piece of land for an isolated administrative purpose, such as the building of a post office or a railway station. In such cases, we pay adequate compensation, the market value and something in addition. That law is not in any way varied..... Social legislation affecting the community in general or large sections of it stands on a different footing and it has to be viewed from a different angle."

4.62. Finally in his speech⁴⁰ in the Rajya Sabha on 19th April, 1955, Shri G. B. Pant concluded :—

"I think the Parliament will always try to take a reasonable view. The collective wisdom of the Parliament will do the right thing and will always take a just and equitable view. It is interested in advancing the welfare of all classes and all communities. We have to work for the establishment of a Welfare State on a socialistic pattern. That is what the Parliament decided. There are certain directive principles in our Constitution. So, in whatever the Parliament does, it will place before itself the Central objective for which (it) has to function. And it will consistently with those objectives and principles make every effort to render justice to everyone—to pay to Peter as well as to Paul what is due to either. So, there need be no apprehensions in any quarter."

4.63. The object of the Constitution (Fourth Amendment) Act, 1955 was to make the Parliament or the State Legislature the sole judge on the question of compensation. A heavy responsibility is thus cast on the legislature to do the right thing and take a just and reasonable view particularly having regard to the apprehensions expressed in both the Houses of Parliament that the power conferred by Article 31(2) as amended may be misused.⁴¹

Our approach and recommendations

4.64. It may be recalled that the sum and substance of the speeches made in connection with the Constitution (Fourth Amendment) Bill, was that where property is acquired for a colossal scheme of social reform the State is not in a position to pay compensation according to the market rate. We think that it is necessary to protect the interests of the individual by providing for fair compensation in cases of all kinds of acquisition. We find it difficult to advocate a breach of Constitutional safeguards and basic rights on the basis of political objectives even though we may be agreeing with those political objectives. It is legally not

possible to look at the question from the point of view of the State alone and completely ignore the injury caused to the citizen. There can be no understandable reason for holding that if an individual loses his land under a small scheme he should get a just compensation but if that land is acquired under a big project, he may be deprived of his land on payment of inadequate compensation simply because the State has not the funds to make a just payment. In our opinion, if the State wants to resolve this conflict of interests in its own favour, then it is necessary that the relevant articles relating to fundamental rights in the Constitution should be suitably amended and not that the Constitution should be bypassed. Equitable compensation must be equitable both to the individual and to the community. We appreciate the need for protecting the State against the payment of compensation based on speculative rise in prices in the case of large-scale projects. We have kept in view both these aspects of the matter while framing our recommendations on the quantum of compensation.

4.65. Though it may involve some repetition, we would refer only to a few of our recommendations for illustrating how we have tried to strike a balance between the conflicting claims of the individuals and the community.

4.66. India is predominantly an agricultural country and agricultural land plays a prominent part in our economy. Most of the social welfare reforms relate to the agricultural land which cover the majority of our population. We have already pointed out that most of the States have enacted legislation abolishing the intermediaries, regulating tenancies and fixing ceilings on land holdings, though progress in implementing this legislation is almost at a standstill in many States; as disclosed by the recent Conference of Chief Ministers held in Delhi for reviewing Land-reform progress over two million acres of land have so far been declared surplus by the ceiling imposed, and about half of the area has already been distributed. In the allotment of surplus lands in accordance with the State legislation and the rules made thereunder, priorities have been given in allotments of land to poor peasants and agricultural labourers particularly those belonging to scheduled castes and backward classes.⁴²

4.67. While we agree that a reasonable classification can be made between land which is declared surplus by a properly enacted law and other land

⁴⁰. See Parliamentary Debates—Rajya Sabha, 19th April, 1955—Col. 5104.

⁴¹. In this context the following observations of Mr. Justice William Douglas of the American Supreme Court may also be noted. Referring to our Constitution (Fourth Amendment) Act, 1955, he stated in the course of his Tagore Law Lectures delivered in the University of Calcutta in July, 1955 :

"Whatever the cause, the 1955 Amendment casts a shadow over every private factory, plant, or other individual enterprise in India. The Legislature may now appropriate it at any price it desires, substantial or nominal. There is no review of the reasonableness of the amount of compensation or confiscation-dependent wholly on the mood of the Parliament."

William O. Douglas, From Marshall to Mukherjee, Studies in American and Indian Constitutional Law, 1956, p. 224.

⁴². Vide written reply given in the Lok Sabha on 4-12-69 by the Minister of State for Food and Agriculture Shri Annesaheb P. Shinde.

for the purpose of determining compensation specially when the acquisition is to advance a laudable directive contained in the Constitution itself, the same approach cannot and should not be made in acquiring other lands which cannot be declared surplus under any law. The need for protecting the interests of the individual as against that of the State is much greater in the case of such acquisitions and there appears to be no understandable reason why the rule of 'just equivalent' should not apply. Even in normal acquisition we have made a distinction between the cases of acquisition where a small pocket of land is acquired for a public purpose like setting up of a post office, construction of a road or hospital etc. and cases of big projects involving acquisition of large tracts of land, as, for example, for setting up of a new town, construction of a big dam etc. It is only in the case of big projects that a speculative rise in prices takes place. We have recommended that market price of land may be determined with reference to the date of the notification under Section 4(1) of the Act in normal cases of acquisitions, whereas the same should be payable with reference to the date of the publication of the project notification, where land is acquired for big projects. A project for which it is proposed to acquire land covering an area of not less than 100 acres may, in our view, be considered to be a big project for this purpose. However, it is not desirable to fix compensation rigidly on the basis of the market rate prevailing on the date of the publication of the project notification as in a growing society some sort of appreciation is inevitable. With a view to preventing the undue profiteering and speculation, we have suggested that in determining the compensation an additional allowance should be made for the normal rise in the land value during the period between the publication of the project notification and that of the Section 4(1) notification subject to a maximum of 25 per cent of the land value on the date first mentioned. We have, however, suggested that the special provisions with regard to project acquisitions should not apply to any acquisition of land for a project where notification under Section 4(1) in respect of the acquisition is not published within 2 years from the date of the publication of the notification declaring the project. Such a provision would be reasonable and in the interests of the land holders without unduly restricting the developmental plans of the State.

4.68. We will state our other recommendations at their proper place.

4.69. Before closing this chapter, we would like to stress that we are fully aware of the imperative need for minimising the concentration of wealth in

few hands and the necessity of removing the social disparities for achieving the objectives of a welfare state envisaged by our Constitution. But this does not mean that when the State acquires property for its needs, it should not give a fair deal to the holders whom it forcibly dispossessed. There are other measures which can always be adopted by the State for removal of social inequalities. In this context, we are reminded of the speech of the former Home Minister, the late Pt. Pant, made by him in the Rajya Sabha in the course of the Constitution (Fourth Amendment) Bill, 1955. In the course of his speech Pt. Pant observed as follows:—

"It should not be forgotten that all private rights in property are the creatures of society. Such rights exist because the State is able to maintain order and to follow certain policies. Even if one were to say that compensation should be determined by the market value, the State could always order things in such a way that the value might almost be diminished and reduced to zero. The State could impose taxation to the extent of 99.5 per cent on the income from the property. There is nothing to prevent it from doing so. There is no constitutional bar." It could say that the rent to be paid would be such as would be even less than the cost of repairs of the property. So various devices could be adopted which would altogether nullify even a provision about the payment of a price on the basis of the market value."

4.70. It appears that the observations of Mr. Pant were to a certain extent an overstatement of the rights of the State under the Constitution. Still we are of the opinion that so long as the Right to Property is recognised as a Fundamental Right, though in a more restricted form after the Constitution (Fourth Amendment) Act, 1955, we would not be justified in recommending a law providing for inadequate compensation. In fact, the need for protecting the individual as against the State is all the greater because of the powers of the State to adopt various devices which would altogether nullify, in effect, the provision about the payment of fair compensation to the owner deprived of his property as a result of compulsory acquisition.

Need for self imposed restrictions on the power of acquisition

4.71. We have already pointed out that according to the view now taken by the Supreme Court in the latest case of *R. C. Cooper and Others v. Union of India*, it will be possible for a citizen to

⁶⁸. With regard to the question of the power of taxation by the State, reference may be made to the recent judgement of the Supreme Court in *Assistant Commissioner of Urban Land Tax & Others v. the Buckingham & Carnatic Co., Ltd. etc.* Civil Appeals No. 21 to 23, 45, 47, 125 & 274 of 1959. In this case the Court pointed out that as a general rule it may be said that so long as a tax retains its character as a tax and is not confiscatory or extortionate the reasonableness of the tax cannot be questioned. The Court extremely reluctant to override the legislative judgement as to the necessity for retrospective taxation, not only because of the paramount governmental interest in obtaining adequate revenues but also because taxes are not in a nature of a penalty or a contractual obligation but rather a means of apportioning the costs of government among those who benefit from it.

⁶⁹. Rajya Sabha Debates, 17th March, 1955.

claim in an appropriate case that the law authorising compulsory acquisition of property imposes fetters upon his right to hold property which are not reasonable restrictions in the interests of the general public. In other words, the law will have to satisfy the test of reasonable restrictions as laid down in Article 19(5) of the Constitution. While formulating our recommendations we have suggested certain restrictions in the matter of acquisition of land by the State. We are aware that all these restrictions are not called for, for satisfying the requirements of the law viz. Article 19(5). Nevertheless, we think that the State should voluntarily impose upon itself certain restrictions in the interests of the people when the land is sought to be acquired for its needs for Democracy is basically a 'rule of law' which cannot be easily reconciled with an inequitable and arbitrary use of power. Corruption and abuse of authority are round the corner the moment the protection of his rights is not available to the citizen and 'law' is sought to be bypassed by short cuts. We, therefore, proceed to recommend certain reasonable restrictions in the matter of acquisition of land by the State

4.72. In the first place, we have felt the necessity of suggesting provisions which would check excessive acquisition of land by the State. The details would be given at another place. Secondly we feel that further safeguards should be provided for preventing the non-utilisation or under-utilisation of the land for the purpose for which the same is acquired by Government for itself or for the companies. Thirdly, we have also recommended that the provisions of Part VII of the Act which impose salutary restrictions in the matter of acquisition of land for companies should be complied with in all cases of acquisition of land for a company other than a Government Company/Corporation/Body Corporate and not merely "ordinarily" as envisaged by the existing rules. We think that a salutary restriction should not be left for its application to executive discretion for authority has a weakness for exercising its discretion repeatedly on extremely questionable grounds once this option is given to it. We will dilate on these points at a later stage. Here we would only like to say that in our recommendations, we have tried to harmonise the needs of the state with the rights of the citizen in such a manner that on the one hand the State projects should not be hampered and on the other hand the individual should not be injured unnecessarily and inequitably.



ANNEXURE

(Ref. Para. 4.5)

Extracts of Art. 31, 31-A & 31-B and the 9th Schedule of the Constitution

Right to Property

¹31. *Compulsory acquisition of property.*—(1) No person shall be deprived of his property save by authority of law.

²[(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.]

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.]

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect—

- (a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or
- (b) the provisions of any law which the State may hereafter make—
 - (i) for the purpose of imposing or levying any tax or penalty, or
 - (ii) for the promotion of public health or the prevention of danger to life or property, or
 - (iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and

the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of sub-section (2) of section 299 of the Government of India Act, 1935.

³[31-A. *Saving of laws providing for acquisition of estates, etc.*—⁴[(1) Notwithstanding anything contained in article 13, no law providing for—

- (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
- (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
- (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or
- (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of share-holders thereof, or
- (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31:

⁵Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:]

¹ In its application to the State of Jammu and Kashmir, in art. 31, cl's. (3), (4) and (6) shall be omitted and for cl. (5) the following clause shall be substituted, namely:—

"(5) Nothing in clause (2) shall affect—

- (a) the provisions of any existing law; or
- (b) the provisions of any law which the State may hereafter make —
 - (i) for the purpose of imposing or levying any tax or penalty; or
 - (ii) for the promotion of public health or the prevention of danger to life or property; or
 - (iii) with respect to property declared by law to be evacuee property."

² Subs. by the Constitution (Fourth Amendment) Act, 1955, s. 2, for the original clause.

³ Ins. by the Constitution (First Amendment) Act, 1951, s. 4 (with retrospective effect).

⁴ Subs. by the Constitution (Fourth Amendment) Act, 1955, s. 3, for the original clause (with retrospective effect).

⁵ In its application to the State of Jammu and Kashmir, the proviso to cl. (1) of art. 31A shall be omitted.

"[Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.]

(2) In this article,—

"(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

(i) any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu* and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, "raiyyat, under-raiyyat] or other intermediary and any rights or privileges in respect of land revenue].

"[31B. *Validation of certain Acts and Regulations.*—Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulation specified in the Ninth Schedule for any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.]

"[NINTH SCHEDULE]

[Article 31B]

1. The Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950).
2. The Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act LXII of 1948).
3. The Bombay Maleki Tenure Abolition Act, 1949 (Bombay Act LXI of 1949).
4. The Bombay Teluqdari Tenure Abolition Act, 1949 (Bombay Act LXII of 1949).
5. The Panch Mahals Mehwasai Tenure Abolition Act, 1949 (Bombay Act LXIII of 1949).
6. The Bombay Khoti Abolition Act, 1950 (Bombay Act VI of 1950).
7. The Bombay Paragana and Kulkarni Watan Abolition Act, 1950 (Bombay Act LX of 1950).
8. The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Madhya Pradesh Act I of 1951).
9. The Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948).
10. The Madras Estates (Abolition and Conversion into Ryotwari) Amendment, Act, 1950 (Madras Act I of 1950).
11. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Uttar Pradesh Act I of 1951).
12. The Hyderabad (Abolition of Jagirs) Regulation, 1358F. (No. LXIX of 1358, Fasli).
13. The Hyderabad Jagirs (Commutation) Regulation, 1359F. (No. XXV of 1359, Fasli).
14. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950 (Bihar Act XXXVIII of 1950).
15. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U.P. Act XXVI of 1948).

* Ins. by the Constitution (Seventeenth Amendment) Act, 1964, s. 2.

† Subs. by the Constitution (Seventeenth Amendment) Act, 1964, s. 2, for sub-clause (a) (with retrospective effect).

‡ In its application to the State of Jammu & Kashmir for sub-clause (a) of cl. (2) of art. 31A, the following sub-clause shall be substituted, namely :—

"(a) 'estate' shall mean land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes—

(i) sites of buildings and other structures on such land;

(ii) trees standing on such land;

(iii) forest land and wooded waste;

(iv) area covered by or fields floating over water;

(v) sites of jandars and gharats,

(vi) any jagir, inam, muafi or mukarrari or other similar grant, but does not include—

(i) the site of any building in any town, or town area or village abadi or any land appurtenant to any such building or site;

(ii) any land which is occupied as the site of a town or village; or

(iii) any land reserved for building purposes in a municipality or notified area or cantonment or town area or any area for which a town planning scheme is sanctioned."

§ Subs. by Act 53 of 1953, s. 4 (with effect from 14-1-1969).

|| Ins. by the Constitution (Fourth Amendment) Act, 1955, s. 3 (with retrospective effect).

¶ Ins. by the Constitution (First Amendment) Act, 1951, s. 5.

|| Ins. by the Constitution (First Amendment) Act, 1951, s. 14.

¶ Added by the Constitution (Fourth Amendment) Act, 1955, s. 5.

16. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act LX of 1948).
17. Sections 52A to 52G of the Insurance Act, 1938 (Act IV of 1938), as inserted by section 42 of the Insurance (Amendment) Act, 1950 (Act XLVII of 1950).
18. The Railway Companies (Emergency Provisions) Act, 1951 (Act LI of 1951).
19. Chapter III-A of the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951), as inserted by section 13 of the Industries (Development and Regulation) Amendment Act, 1953 (Act XXVI of 1953).
20. The West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948), as amended by West Bengal Act XXIX of 1951.]
- ¹⁴[21. The Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Andhra Pradesh Act X of 1961).
22. The Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Validation) Act, 1961 (Andhra Pradesh Act XXI of 1961).
23. The Andhra Pradesh (Telangana Area) Ijara and Kowli Land Cancellation of Irregular Pattas and Abolition of Concessional Assessment Act, 1961 (Andhra Pradesh Act XXXVI of 1961).
24. The Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959 (Assam Act IX of 1961).
25. The Bihar Land Reforms (Amendment) Act, 1953 (Bihar Act XX of 1954).
26. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XXII of 1962), (except section 28 of this Act).
27. The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1954 (Bombay Act I of 1955).
28. The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1957 (Bombay Act XVIII of 1958).
29. The Bombay Inams (Kutch Area) Abolition Act, 1958 (Bombay Act SCVIII of 1958).
30. The Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960 (Gujarat Act XVI of 1960).
31. The Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat Act XXVII of 1961).
32. The Sagbara and Mehwasli Estates (Proprietary Rights Abolition, etc.) Regulation, 1962 (Gujarat Regulation I of 1962).
33. The Gujarat Surviving Alienations Abolition Act, 1963 (Gujarat Act XXXIII of 1963), except in so far as this Act relates to an alienation referred to in sub-clause (d) of clause (3) of section 2 thereof.
34. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Maharashtra Act XXVII of 1961).
35. The Hyderabad Tenancy and Agricultural Lands (Reenactment, Validation and Further Amendment) Act, 1961 (Maharashtra Act XLV of 1961).
36. The Hyderabad Tenancy and Agricultural Lands Act, 1950 (Hyderabad Act XXI of 1950).
37. The Jenmikaram Payment (Abolition) Act, 1960 (Kerala Act III of 1961).
38. The Kerala Land Tax Act, 1961 (Kerala Act XIII of 1961).
39. The Kerala Land Reforms Act, 1963 (Kerala Act I of 1964).
40. The Madhya Pradesh Land Revenue Code, 1959 (Madhya Pradesh Act XX of 1959).
41. The Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (Madhya Pradesh Act XX of 1960).
42. The Madras Cultivating Tenants Protection Act, 1955 (Madras Act XXV of 1955).
43. The Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956 (Madras Act XXIV of 1956).
44. The Madras Occupants of Kudiyruppu (Protection from Eviction) Act, 1961 (Madras Act XXXVIII of 1961).
45. The Madras Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (Madras Act LVII of 1961).
46. The Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Madras Act LVIII of 1961).
47. The Mysore Tenancy Act, 1952 (Mysore Act XIII of 1952).
48. The Coorg Tenants Act, 1957 (Mysore Act XIV of 1957).
49. The Mysore Village Offices Abolition Act, 1961 (Mysore Act XIV of 1961).
50. The Hyderabad Tenancy and Agricultural Lands (Validation) Act, 1961 (Mysore Act XXXVI of 1961).
51. The Mysore Land Reforms Act, 1961 (Mysore Act X of 1962).
52. The Orissa Land Reforms Act, 1960 (Orissa Act XVI of 1960).
53. The Orissa Merged Territories (Village Offices Abolition) Act, 1963 (Orissa Act X of 1963).
54. The Punjab Security of Land Tenures Act, 1953 (Punjab Act X of 1953).
55. The Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955).

¹⁴ Added by the Constitution (Seventeenth Amendment) Act, 1964, s. 3.

56. The Rajasthan Zamindari and Biswedari Abolition Act, 1959 (Rajasthan Act VIII of 1959).
57. The Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (Uttar Pradesh Act XVII of 1960).
58. The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (Uttar Pradesh Act I of 1961).
59. The West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954).
60. The West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956).

61. The Delhi Land Reforms Act, 1954 (Delhi Act VIII of 1954).
62. The Delhi Land Holdings (Ceiling) Act, 1960 (Central Act 24 of 1960).
63. The Manipur Land Revenue and Land Reforms Act, 1960 (Central Act 33 of 1960).
64. The Tripura Land Revenue and Land Reforms Act, 1960 (Central Act 43 of 1960).

Explanation.—Any acquisition made under the Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955), in contravention of the second proviso to clause (1) of article 31A shall, to the extent of the contravention, be void.]¹⁴

¹⁴. In its application to the State of Jammu and Kashmir, the following entries shall be added :—

- "65. The Jammu and Kashmir State Kuth Act (No. 1 of Svt. 1978).
66. The Jammu and Kashmir Tenancy Act (No. II of Svt. 1980).
67. The Jammu and Kashmir Alienation of Land Act (No. V. of Svt. 1995).
68. The Jammu and Kashmir Restitution of Mortgaged Properties Act (No. XVI of Svt. 2006).
69. The Jammu and Kashmir Distressed Debtors Relief Act (No. XVII of Svt. 2006).
70. The Jammu and Kashmir Big Landed Estates Abolition Act (No. XVII of Svt. 2007).
71. Order No. 6-H of 1951, dated 10th March, 1951, regarding Resumption of Jagir and other assignments of land revenue, etc."



CHAPTER 5
PRINCIPLES FOR DETERMINING COMPENSATION



सत्यमेव जयते

INDEX

	PARAS No.
1. Various Principles of Compensation	5.2 to 5.4.
A. Market Value	5.5 to 5.16.
B. Potential Value—Whether to be taken into account for determining Market value	5.17 to 5.39.
Law Commission's views on Potential Value	5.36.
C. Date for determining Market Value.	
Determination of market value on the date of notification under Section 4—whether violates Article 31(2)	5.46 to 5.47
Change made by the States	5.48.
D. Reinstatement Value	5.77 to 5.86.
E. Solatium	5.87 to 5.98.
F. Set-Off for betterment of adjoining land	5.99 to 5.107.
G. Improvements made after issue of Notification for acquisition	5.108 to 5.114.
H. Illegal Use of land or use detrimental to health, etc.	5.115 to 5.122.
I. Other Matters to be considered/neglected in determining compensation	5.123 to 5.124.
J. Compensation for mines and minerals	5.125 to 5.140.
K. Compensation in kind	5.141 to 5.143.
L. Interest on Compensation	5.144 to 5.153.
2. Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making laws and Regulations under the provisions of the Indian Council Acts, 1891 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14)	Annexure.
3. The Punjab Land Revenue Act (XXXIII of 1871)	Annexure.
4. The Land Compensation Act, 1961 Ch. 33-Part II	Annexure.



Principles for Determining Compensation

The Second Term of Reference requires us to review the principles for determining compensation under the Land Acquisition Act, 1894. Under Article 31(2) of the Constitution, the law, under the authority of which property is compulsorily acquired or requisitioned, must either fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be determined and given.

Various Principles of Compensation

5.2. Specification of principles means laying down general guiding rules applicable to all persons or transactions governed thereby. Under the Land Acquisition Act, compensation is determined on the basis of "market value" of the land on the date of the notification under s. 4(1) of that Act. This is one way of specification of a principle. The principles may be specified in many other ways. Rules enunciated by the Courts for determining compensation for compulsory acquisition under the Land Acquisition Act vary according to the nature of the land acquired. For properties which are not marketable commodities, such as lands, buildings and incorporeal rights, valuation has to be made on the application of different rules. Principle of capitalisation of net rent at the current market rate on gilt-edged securities, principles of reinstatement, principle of determination of original value less depreciation, determination of break-up value in certain types of property which have outgrown their utility, and a host of other so-called principles are employed for determination of compensation payable for acquisition of lands, houses, incorporeal rights, etc.¹ In determining compensation payable under the Land Acquisition Act, special adaptability to schemes of development and potentialities are relevant considerations but the urgent need of the person who acquires and the disinclination of the

vendor to part with the land are not to be taken into account. The Land Acquisition Act provides for determination of compensation by reference to the market value subject to certain matters being taken into account and some others being excluded as set out in ss. 23 and 24 of that Act. Section 23 deals with the matters not to be considered by the Collector and the Court in determining the amount of compensation for land acquired under the Act. It is important to note here that the expression 'Land' as defined in Section 3(a) of the Land Acquisition Act includes benefits to arise out of land, and things attached to the earth. The definition so given is not exhaustive. In Wharton's Law Lexicon² 'Land' is construed as a generic term comprehending every species of ground or earth, as meadows, pastures, woods, moors, water meshes, furze and heath; also houses, mills, castles, buildings; it extends to an indefinite extent upwards and also downwards to the Globe's centre. Thus, 'land' besides being mere land or soil includes the buildings on it, any changes on it, and other things in it. Mines and minerals are also included in the land.

5.3. In determining the amount of compensation under section 23, the Court is required to take into consideration matters such as the market value of the land, damage by reason of taking of any standing crops or trees, damage due to severing of land from other land, etc. But the Court cannot take into consideration matters such as increase to the value of the acquired land or other land of the person likely to accrue from the use to which the land acquired will be put after acquisition; any improvements on the land acquired made without the Collector's sanction after the publication of the S. 4 notification, etc. (see Section 24).

1. Per Shah J. *State of Gujarat v. Shri Santilal Mangaldas and Others*, A.I.R. 1969, S.C. 634. In the recent case of *R.C. Cooper & Others v. Union of India* (the Banks Nationalisation Case) decided on 10th February, 1970, the Supreme Court speaking through Shah J. pointed out that the science of valuation of property recognises several principles for determining the value to be paid as compensation to the owner for loss of his property. According to the Court, the important methods of determination of compensation are :—

- (i) Market value determined from sales of comparable properties, proximate in time to the date of acquisition, similarly situate, and possessing the same or similar advantages and subject to the same or similar disadvantages.
- (ii) capitalization of the net annual profit out of the property at a rate equal in normal cases to the return from gilt-edged securities. Ordinarily value of the property may be determined by capitalizing the net annual value obtainable in the market at the date of the notice of acquisition; (iii) where the property is a house, expenditure likely to be incurred for constructing a similar house and reduced by the depreciation for the number of years since it was constructed; (iv) principle of reinstatement; (v) when the property has outgrown its utility and it is reasonably incapable of economic use, it may be valued as land plus the break up value of the structure; (vi) the property to be acquired has ordinarily to be valued as a unit. Normally an aggregate of the value of different components will not be the value of the unit.

These are, however, not the only methods. As observed by Shah J., in the same case, the methods of determining the value of property by the application of an appropriate multiplier to the net annual income or profit is a satisfactory method of valuations of lands with buildings, only if the land is fully developed, i.e. it has been put to full use legally permissible and economically justifiable, and the income out of the property is the normal commercial and not a controlled return, or a return depreciated on account of special circumstances. If the property is not fully developed or the return is not commercial the method may yield misleading result.

2. Page 440.

5.4. Having regard to the suggestions made to us in the context of the principles for determining compensation, we propose to discuss the subject with reference to the following heads:

- A. Market value.
- B. Potential value—whether to be taken into account for determining market value.
- C. Date for determining market value.
- D. Reinstatement value.
- E. Solatium.
- F. Set-off for betterment of adjoining land.
- G. Improvements made after issue of notification for acquisition.
- H. Illegal use of land for building and overcrowding.
- I. Other matters to be considered/neglected in determining compensation.
- J. Compensation for Mines and Minerals.
- K. Compensation in kind.
- L. Interest on compensation.

Market Value

5.5. Clause one of section 23(1) enjoins that in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall take into consideration the market value of the land at the date of publication of the notification under section 4(1). Market value, as a basis of compensation is indeed a just and fair principle of compensation. The Constitution does not cast an obligation to pay compensation at the market rates except in the case envisaged in the second proviso to Article 31-A(1). This proviso enacts that a land which comprises in any "estate" within the ceiling limit applicable for the time being to a person personally cultivating his land can be acquired only on paying compensation at a rate which shall not be less than the market value. We are unable to find any reasonable basis for making this discrimination. We think that compensation should be payable on all lands acquired only on the basis of market value as has been the guiding principle acceptable up to now.

5.6. The expression 'market value' has not been defined in the Act though in determining the amount of compensation the factors which are to be taken into consideration and which should be ignored have been specified. One of the suggestions made before the Committee was that the term 'market value' should be defined.

5.7. Can the term 'market value' be defined in such a manner so as to give it a more definite meaning? There are a number of decided cases in which the term 'market value' has been interpreted by the Courts. A brief review of the salient principles laid down by the courts thus becomes relevant.

5.8. The market value of land is not capable of ascertainment with mathematical accuracy.³ As pointed out by the Privy Council, "there is not, in general, any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity."⁴ In determining market value, many factors are required to be taken into consideration, for instance, the uses to which it is put, its potential value and the rise or fall of demand for land.

5.9. The judicial committee of the Privy Council has established⁵ three modes of valuations, namely:—

1. The price paid within reasonable time in *bona fide* transactions of purchase of the lands acquired or the lands adjacent to the land acquired and possessing similar advantages;⁶
2. The number of year's purchase of the actual or immediate prospective profits of the land acquired; and
3. the opinion of experts.

5.10. In a recent case, *State of Kerala v. P. P. Hasan Koya*⁷ the Supreme Court has explained the extent to which and the circumstances in which the first and second methods of valuation can be resorted to:

1. An instance of a sale which is proximate in time to the date of the notification under Section 4(1) of the Land Acquisition Act in respect of land similarly situated and with similar advantages and which is proved to be a transaction between a willing vendor and a willing purchaser would form a reliable guide for determining the market value.

³. Valayudam v. Spl. Tahsildar, AIR 1959 Mad. 462.

⁴. Sri Raja Vyricherla Naravana Gajapatraju Bahadur Garu v. the Revenue Divisional Officer, Vizagapatam (known as the Chemudu case)—ILR 1939 Mad. (P.C. 532).

⁵. Harish Chander v. Secretary of State—11 C.W.N. 875 at p. 876. Relied upon by the Supreme Court in *State of Gujarat v. Vakhatsinghji Vajesinghji Vaghela*, AIR 1968 SC 1481. See also *Karachi Municipality v. Naraindas*, AIR 1933 Sind 57 and *Amrita Lal v. Secretary of India* 22 I.C. 78.

⁶. In Chemudu's case ILR 1939 Mad. 532; AIR 1939 P.C. 98(102), the Privy Council had also said:

"In the case of land, its value in general can also be measured by a consideration of the prices that have obtained in the past for land of similar quality and in similar positions, and that is what must be meant in general by 'the market value' in Section 23."

⁷. AIR. 1968 SC 1201 (1203).

2. The value which a willing vendor might reasonably expect to receive from a willing purchaser in respect of a house generally depends upon a variety of circumstances including the nature of the construction, its age, situation, the amenities available, its special advantage and a host of other circumstances.

3. When the property sold is land with building, it is often difficult to secure reliable evidence of instances of sale of similar lands with buildings proximate in time to the date of the notification under Section 4. Therefore, the method which is generally resorted to in determining the value of the land with buildings especially those used for business purposes is the method of capitalisation of return actually received or which might reasonably be received from the land and the buildings. It cannot be laid down as a general rule applicable to all situations and circumstances that a multiple approximately equal to the return from gilt-edged securities prevailing at the relevant time forms an adequate basis for finding out the market value of the land.

5.11. Where sale deeds pertaining to different transactions are relied on by the Government, that representing the highest value which similar land in the locality is shown to have fetched in a *bona fide* transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition should be preferred to the rest unless there are strong circumstances justifying a different course; and the average of more than one sale deeds should not be taken into account.⁹

5.12. The Supreme Court has held¹⁰ that transaction of small plots do not afford a real assistance when a large plot has to be valued as small plots of land always fetch prices which work out to several times the figures for those which can be had for large plots. It is also well settled that court sales are not to be taken into consideration, for they never fetch the real values of the properties in as much as only the right, title and interest of the judgment debtor are sold, the Court giving no assurance as to their freedom from any encumbrance.¹¹

5.13. The third method of valuation is valuation by an expert. An expert has to possess special knowledge on the subject of valuation and he should have had adequate practical experience. The opinion of experts to be of any value must be based on definite facts and materials carefully weighed, and

opinion based on a casual visit or untested information or gossip can be of little value.¹²

5.14. We have briefly explained the principles evolved by the Courts in determining the market value of the land. We feel that by and large these principles are sound. We are, therefore, of the opinion that there is no need for defining the term 'market value' which has come to mean the price which a willing vendor may reasonably expect to obtain from a willing purchaser. In this context, it is interesting to note that this question was raised as early as 1893 when the Bill to amend the Land Acquisition Act, 1870 was introduced. The said Bill contained a definition of market value but the Select Committee which considered this Bill preferred not to define it¹³ and made the following observations:

"The section as drafted in the Bill contained a definition of 'market value' to which exception has been widely taken as inapplicable to many parts of the Country and when applicable, open to much objection. . . . The price which a willing vendor may be expected to obtain in the market from a willing purchaser should be left for the decision primarily of the Collector and ultimately of the Court. It is preferable to leave the term undefined. No material difficulty has arisen in the interpretation of it. The judicial opinion as represented by the observations of the Supreme Court and the various High Courts is unanimous in giving it the meaning 'what a willing buyer would give to a willing seller.' The introduction of a definition is likely to throw up a large crop of conflicting decisions which would be far from desirable specially when no definition can provide a satisfactory yardstick to measure all those circumstances which vary from case to case in the immensely divergent conditions of our country but all of which play their part in determining the 'market value' of the land."

5.15. The Law Commission which reviewed the Land Acquisition Act in 1958 also endorsed the views of the Select Committee. The Commission also observed that a considerable volume of case law has been built up on the interpretation of the expression 'market value' and that it was not possible to lay down any uniform set of rules for determination of market value of the land applicable to all cases. The Commission concluded that it should be left to the Courts to evolve the principles for determination of compensation having regard to the nature of the property, its situation, and other relevant considerations.

⁹. Sri Rani M. Vijayalakshshamma Rao Bahadur, Ranees of Vuyyur v. Collector of Madras, (1968) 2 SCJ 869.

¹⁰. K. Ananthram Singh v. Spl. Dy. Collector—C.T. No. 748 of 1965 decided on 22-3-1968.

¹¹. AIR 1957 SC 202.

¹². Abdul Rahim v. Secretary of State, AIR 1926 Lah. 618.

¹³. One Member of the Committee, Shri P. Chintal Rao disagreed with this view and preferred that the Act should define this expression. In his dissenting note he suggested the following definition of it.

"Market value is the price which the property would fetch if taken into the market by the owner himself and let/surety and advantageous sale thereof effected but where, owing to absence of demand in the locality such value fall below the actual cost of creating the property, then such actual cost, making allowance for deterioration by time and user, shall be deemed as market value'. In any case, if the claimant prefers it, the market value shall be assumed to be twentyfive times the average annual income derivable from the property."

5.16. We agree with the view of the Select Committee and the Law Commission that it is preferable to leave the term 'market value' undefined.

B.—POTENTIAL VALUE—WHETHER TO BE TAKEN INTO ACCOUNT FOR DETERMINING MARKET VALUE.

5.17. It is well settled that the market-value on the basis of which compensation is payable under Section 23 of the Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages, and its potentialities when laid out in its most advantageous manner excluding any advantage due to the carrying out of the scheme for the purposes of which the property is compulsorily acquired.¹³

5.18. The Supreme Court in *Vajravelu Mudaliar v. Spl. Dy. Collector*¹⁴ has expressed the view that in awarding compensation if the potential value of the land is excluded, it cannot be said that the compensation awarded is the just equivalent of what the owner has been deprived of; but such an exclusion only pertains to the method of ascertaining the compensation. One of the elements that should properly be taken into account in fixing the compensation is omitted; it results in the inadequacy of the compensation, which is not justiciable after the Constitution (Fourth Amendment) Act, 1955, and that in itself does not constitute fraud on power. Therefore, the Court upheld the Land Acquisition (Madras Amendment) Act, 1961, which had provided for disregarding the suitability or adaptability of the land acquired for any use other than the use for which it was put on the date of publication of the notice, as a factor in determining compensation.

5.19. The provisions of the Central Land Acquisition Act have been modified by certain States so as to exclude the potential value from consideration in determining the market value of the land. In this context, reference may be made to the Rajasthan Land Acquisition Act, 1953, Section 23(3) (a, c & f) and other statutes dealing with urban, industrial and development projects. A list of these statutes is annexed. On the other hand, some of the most recent statute e.g., the Assam Town and Country Planning Act, 1959, the M. P. Town Improvement Trusts Act, 1960, the Maharashtra Regional Town and Country Planning Act, 1966, the Gujarat Industrial Development Act, 1962, and the Maharashtra Industrial Development Act, 1961 (as amended by Act XI of 1967 substituting *inter alia* existing use value clause) do not contain the provision which restricts the market value of the land to its existing use. It appears that the exclusion of potential value in some of the Indian statutes has been inspired by the legislation of the

United Kingdom on the subject. In the United Kingdom, there have been many changes in the principles for determining compensation. It may be helpful to have a short historical review of the same for understanding and appreciating our recommendations on the subject of 'potential value'.

5.20. In the United Kingdom, the first code that governed compulsory acquisition was the Lands Clauses Consolidation Act, 1845. That Act had no precise rules as to what the standard of compensation should be, but a whole series of judicial pronouncements eventually laid down the proposition that compensation should be assessed as the value to the owner. Under this Act all advantages which the land possessed present or future, were to be taken into consideration as part of the value to the owner so as to give the land the greatest value. The potentiality was not to be excluded just because of the requirement of the statutory powers or because there was only one purchaser. Further, restrictions on the enjoyment of the land (such as restrictions on sale, price or rent, on development under the Town and Country Planning Act and other Acts, and restrictive covenants and landlord's restrictions on user) as well as the possibility of the removal of restrictions was to be taken into account.¹⁵ This doctrine of value to the owner was substituted by the Acquisition of Land (Assessment of Compensation) Act, 1919, S. 2) by a more definite and restricted basis viz., "the amount which the land, if sold, in the open market by a willing seller might be expected to realise"—known in practice as 'Open market value'. The Act of 1919, also imposed certain limitations on the concept of potential value. The basic rule in that Act was that land was to be bought at market value excluding any value to a "special purchaser". This was the basis of acquisition until 1944, when the first of the "artificial ceilings" was introduced. The Town and Country Planning Act, 1944, introduced a ceiling in order to eliminate scarcity value due to war-time conditions. Compensation was to be assessed on 1939 values which in most cases were lower than in fact obtained in 1944 and the disparity progressively increase. Implementing the recommendations of the Uthwatt Committee the Town and Country Planning Act, 1947, introduced a new concept into the process of valuation for compulsory purchase. It excluded the potential development value by providing that the valuation was to be based on the existing use of the land at the date of the notice to treat (S. 51). The term 'existing use' was not synonymous with actual use as it did not exclude all value attributable to potential development, but subject to the provisions of the Third Schedule to the Act which might be regarded as similar to lawful use.¹⁶ Under the Act, the existing development value was in effect acquired by the State and the owners were entitled to make claims for loss of that development value upon a global fund of £300 million." In conse-

¹³ R. Narain Singh v. U. P. Government (1967) II SCJ 214.

¹⁴ AIR 1965 SC 1017.

¹⁵ *Crabbs Compulsory Acquisition of Land*, 1962. Paras 4-012 4-016.

¹⁶ Para 157 pp. 177-01—Halsbury's Laws of England, Vol. I.

¹⁷ Para 170, p. 102—Halsbury's Laws of England, Vol. 2.

quence the owner could only sell what he had left: and what he had left was the existing use value. Therefore, compensation on a compulsory acquisition was based upon existing use. The Town and Country Planning Act, 1954, introduced compulsory purchase at existing use value plus the value of the admitted claim, if any, on the aforesaid fund of £300 million.¹⁸ Under this Act, compensation for compulsory purchase continued in general to exclude potential development value.¹⁹ This basis lasted until the Town and Country Planning Act, 1959. That Act returned more or less to the simple conception of market value as it existed from 1919 until the first of the artificial ceilings was introduced in 1944. The provisions of the 1959 Act have been reenacted in the Land Compensation Act, 1961.²⁰

5.21. The Act of 1961 applies to acquisition under notices to treat, served on or after 1st August, 1961. This Act does not affect the owner's general right to compensation under the provisions of the Lands Clauses Act, 1845, or the Compulsory Purchase Act, 1965. Its provisions must in all cases be read in conjunction with those general principles laid down by the courts under the 1845 Act.

5.22. But it does make some important modifications in the principles governing the assessment of that part of an owner's compensation which relates to his actual interest in the land acquired. General provisions of the Act relating to compensation are annexed.

5.23. The six basic rules of compensation have been specified in Section 5 of 1961 Act. Under rule 2, the value of the land is taken to be the amount, which the land if sold in the open market by willing seller might be expected to realise. However, the fact that all land is not under strict planning control gives "open market value" a rather different meaning from that which it had in 1919. For in the case of land capable of further development, "the amount which the land.... might be expected to realise" will depend on the kind of development for which—having regard to the current development plan for the area—planning permission is likely to be obtained. In practice, a prospective purchaser in the open market would probably obtain permission for his proposed development before deciding the price he was prepared to pay. But the Act (SS. 14-16) provides for making certain assumptions in assessing the market

value of the land as to the kinds of development for which planning permission might reasonably have been expected to be granted but for the compulsory acquisition.²¹ The valuer must make such one or more of the prescribed assumptions as are applicable to the whole or part of the land to be acquired and compensation will be related to whichever of these assumptions is most favourable from the point of view of value in the open market.²²

5.24. An estimate of market value on the basis of Rule 2 of Section 5 above will take into account all the potentialities of the land including not only the use to which it is put at the date of notice to treat but also any more profitable use to which, subject to the requisite planning permission, it might be put and also subject to the requisite planning permission of any other profitable use it might be put in the future.²³ In valuing the land acquired, however, in relation to itself with its own advantages, the possibilities of development as shown by the scheme of the acquiring authority (S. 6 and First Schedule) will be excluded from consideration but subject to the special suitability and adaptability rule (S. 5 Rule 3).

5.25. Rule 3 of Section 5 provides that in valuing the land, account is not to be taken of any special suitability or adaptability of the land for any purpose if it could only be applied to that purpose under statutory powers or if there is no market apart from the special needs of a particular purchaser or the requirements of any authority possessing compulsory purchase powers.

5.26. The term "special adaptability" which was introduced in connection with undertakings such as reservoirs, connotes no new principle, being only a compendious expression used to indicate the existence of certain advantages, present or future, whereby the land in question has a special value in a particular limited market. 'Special suitability or adaptability' would appear to include any advantages which would enable the land to be used for some purpose higher than its agricultural use.²⁴

5.27. As the exclusion contemplated is of the special suitability or adaptability of the land for any purpose for which there is no market apart from those special needs, the Rule does not apply where the purchaser merely requires it for a purpose for which there is a general market, but is prepared to pay more than others for that purpose because he is able to make more profitable or convenient use.²⁵

¹⁸. This was the Compensation fund set up by the Government under the 1947 Act on which owners were entitled to claim if they considered their land had development value. The closing date for claims was 30th June, 1949. The Central Land Board then settled the claims, which thereupon became "established" and attached to the land concerned.

¹⁹. Halsbury's Laws of England, Vol. 10, Para 173, p. 103.

²⁰. See Compulsory Purchase and Compensation by John K. Boynton. Solicitor November, 1964 edition.

²¹. Lawrence etc. p. 331.

²². Lawrence etc. p. 331.

²³. Lawrence etc. p. 331.

²⁴. Paragraph 4-113 Cripps.

²⁵. Cripps, para 4-116.

5.28. As pointed out above, the Land Compensation Act, 1961, as from 1st August, 1961, incorporated and re-enacted the Acquisition of Land (Assessment of Compensation) Act, 1919 and the basic compensation provisions of the Town and Country Planning Act, 1959. This Act applies to all cases where land is authorised to be acquired compulsorily. Part V of the Act which provided for payment of compensation in certain cases of development after acquisition is, however, excluded by the Land Commission Act, 1967, in cases of acquisition of land by the Commission (S. 86).

5.29. The 1961 Act as well as the Land Commission Act of 1967 were enacted in the U.K. on the basis of the concept that a substantial part of the value increased by the development project returned to the community and so the burden of the cost of land for essential developmental schemes should be reduced. The Land Commission was empowered to acquire land on a basis which gave the owner a value of land for its current use plus an amount sufficient to cover any of his contingent losses. A further amount—a part of the value arising from the prospects of development was also added—to encourage a willing sale.

5.30. This method of assessment has been described as compensation on the basis of the value of the land to the owner. As pointed by Cripps,²⁶ the principle of the value of the land to the owner still applies to compensation where the Act of 1961 applies, but what is to be included in the land to be valued has been modified by the Act of 1961 and the Town and Country Planning Act, 1947, apart from modifications by the special Act; but the measure of value of what is left to be valued remains the same, namely, market value.

5.31. The general principles for determining compensation specified in Sections 23 and 24 of the Land Acquisition Act, 1894, differ in no material respect from those upon which compensation was awarded in the United Kingdom under the Land Clauses Act, 1845, before the coming into operation of the Acquisition of Land (Assessment of Compensation) Act, 1919.²⁷ The principles for determining the market-value under our Act have been clearly stated by the Privy Council in the leading case of *Shri Raja Vyricherla Narayana Gajapatraju Bahadur Garu v. Revenue Divisional Officer, Vizagapatam*, known as the Chemudu Case. The important principles laid down in this case are as follows:—

- (i) The land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined but also by reference to the use to which it is reasonably capable of being put in the future.
- (ii) When the land has unusual or unique features or potentialities, the Valuing Officer must

ascertain as best as he can from the materials before him the price the willing purchaser will pay for the land with those features of potentialities.

- (iii) The value of the potentialities is to be taken into account even where the only possible purchaser for the potentialities is the acquiring authority.
- (iv) It is the possibilities of the land and not its realised possibilities alone that must be taken into consideration.
- (v) The value of the potentialities must be ascertained by the Valuing Officer on such matters as are available to him without indulging in feats of imagination.

5.32. While explaining the doctrine of potential value in a later English Case,²⁸ the House of Lords observed that it is fundamental that the land must be valued in its state at the time of taking and that there are cases where land has a potentiality which may be realisable in the foreseeable future and, if so, will give the land an added value over and above its value for the uses made of it at the time of taking.

5.33. Dealing with the doctrine of potential value in the recent case of *N. B. Jeejeebhoy v. District Collector, Thana*,²⁹ our Supreme Court observed as follows:—

“A vendor willing to sell his land at the market value will take into consideration a particular potentiality or special adaptability of the land in fixing the price. It is not the fancy or the obsession of the vendor that enters the market value but the objective factor namely whether the said potentiality can be turned to account within a reasonable near future. The question, therefore, turns upon the facts of each case.”

5.34. In U.S.A. the value of land is assessed on the basis of its most advantageous and valuable use, having regard to the existing business or wants of the community, or such as may be reasonably probable in the immediate future that have effect on the present market value of the land. The special value of land to the taker or purpose of acquisition is not considered, unless the value is enhanced from the possibility of its coming into the market for the particular purpose independent of its selection by the taker.

5.35. Sections 28 and 29 of the Australian Lands Acquisition Acts, 1906-1934 also provide for payment of compensation on the basis of the value of the land on the relevant date. These Sections have been construed by courts in Australia to mean

²⁶. Cripps on Compulsory Acquisition of Land, 11th edition, 1962, para 4-052.

²⁷. Per Lord Roamer in *Sri Raja Vyricherla Narayana Gajapatraju Bahadur Garu v. the Revenue Divisional Officer, Vizagapatam* (known as the Chemudu Case). ILR (1039) Mad. 532.

²⁸. *Naori Trustee vs. Ministry of Works*, L.R. 1959, A. C. I.

²⁹. 1965 I SCR 636.

value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities."

5.36. Law Commission's view on potential value.—The Law Commission after analysing the principles laid down in Chemudu's case and after examining the genesis of the law relating to compensation in U.K. wherein provision is made for the exclusion of potential value of the land acquired, and the criticism levelled against this provision in that country expressed the following view:—

"In our view, it would not be expedient or proper to adopt in India for purposes of determination of compensation, principles which have been severely criticised by jurists and have caused dissatisfaction among the public in England. The object of the suggestion to restrict the market value to the actual use of the land is undoubtedly to exclude from consideration the potential value of the land. Such a provision is to be found, in our country, in the U.P. Town Improvement Act (VIII of 1919). The relevant provision in the Act is "market value according to the use to which the land was put at the date with reference to which market value is to be determined under that clause." We do not see any justification for modifying the law as laid down in the Chemudu case¹⁰ and exclude the potential value from consideration altogether. The Union and the States have not in their recent legislation, excluded it, and in the latest instance of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (Act XX of 1957), Parliament has adopted section 23(1) of the Land Acquisition Act, 1894, without any modification, for determining compensation¹¹. We do not see any justification for modifying the law as laid down in the Chemudu case and exclude potential value from consideration altogether. It may be of interest to notice that in the United States of America, the same principle as laid down in Chemudu case are in vogue and we have had more equitably to follow the principle accepted in the United States rather than adopt a recent much criticised changes in the Law of England¹²."

5.37. We are of the view that some of the provisions of the Land Compensation Act such as Sections 14 to 22 dealing with assumptions as to

planning permissions are needlessly complicated. The basic principle underlying the legislation is, however, that compensation for acquisition by local and public authorities shall be the price which the property would obtain in the open market. The Act of 1961 devotes so many sections for ensuring the implementation of this principle. As observed by John K. Boynton in his work on Compulsory Purchase and Compensation¹³, "Although all this looks complicated, it is worth a reminder that in the case of developed sites the amount of compensation has throughout usually been equivalent to market value. This is because the basis of compensation has always comprised two elements, (a) the value of the existing building and (b) the site value with a permission to rebuild (see Schedule III, 1947 Act). These two elements taken together will normally equal the full market value of a developed site."

5.38. We have given careful thought to the doctrine of potential value which has been followed by the Indian Courts in determining the market value of the land and the restrictions that have been placed on its application in U.K. and also the views of the Law Commission. In day-to-day life a willing purchaser does take into consideration the potential or probable use of the land to which it could be put in the near future in settling the price that he may offer to the willing vendor. When these considerations do weigh in normal transactions in the sale or purchase of land we do not wish to deprive the land-holders of the money value which he would have otherwise got in the market while giving him compensation for the land acquired by the appropriate authority. We are, accordingly, of the opinion that the potential value of the land should be a relevant consideration for determining the market value as laid down in Chemudu's case cited above.

5.39. Under the Fifth Clause of Section 24 of the Land Acquisition Act, compensation is not payable for any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired. This is in conformity with the law we have placed above and therefore we recommend that while assessing compensation, rise in land values on account of declaration of intention to acquire the land or specific State action to acquire land should not be taken into consideration. We also recommend certain measures for eliminating the rise in land values on account of speculation. This aspect of the matter has been discussed by us in connection with the fixation of the material date for determining the market value. Besides we have also recommended legislation for

¹⁰ In *Grace Bros. Pty. v. the Commonwealth* (72 C.L.R. 269 at p. 293) Dixon J., said :

"It is enough to cite the following passage from the judgement of Isaacs and Rice, JJ., in *Minister for Home and Territories v. Laxitrus* (26 CLR 159 at p. 165); "The ordinary rule has been repeatedly enunciated and is thus stated in the latest case dealing with the matter—*Fraser v. City of Fraserville* (1917) A.C. 187 at p. 194. There Lord Buckmaster, for the Judicial Committee, said : "The value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantages due to the carrying out of the scheme for which the property is compulsorily acquired."

¹¹ I.L.R. (1939) Mad. 532 P.C.

¹² Tenth Report of the Law Commission, on the Law of Acquisition and Requisitioning of land pp. 26-27.

¹³ Page 56, Nov. 1964 Ed.

betterment levy which will also reduce to a certain extent the development value. In our view, a combined effect of these measures would achieve the double purpose of keeping the rise of prices within limits and ensuring a fair value for the landowner. In the result, the compensation assessed on this basis would be fair and equitable both to the individual and to the community, as represented by the State.

C. DATE FOR DETERMINING MARKET VALUE

5.40. In the United Kingdom, the basis of compensation for lands taken is the value of the lands to the owner as they existed at the date of the service of the notice to treat⁴⁴ and only the interests existing at that time are entitled to compensation. A different date, however, may be provided by the special Act but not by agreement.⁴⁵

5.41. In Australia, the value of any land acquired by compulsory process is assessed as follows:—

- (a) In the case of land acquired for a public purpose not authorised by a Special Act, according to the value of the land on the first day of January last preceding the date of acquisition; and
- (b) in the case of land acquired for a public purpose authorised by a Special Act, according to the value of the land on the first day of January last preceding the first day of the Parliament in which the Special Act was passed.⁴⁶

5.42. The validity of the Australian Lands Acquisition Act was challenged⁴⁷ and it was claimed that the Act was not a valid exercise of the power to legislate for the acquisition of property on just terms *inter alia* on the ground that the date of valuation, namely, 1st January last preceding the date of acquisition did not give a fair value to the owner. However, the attack failed.

5.43. There are four possible dates with reference to which the market value can be determined under our Land Acquisition Act, viz., (1) date of publication of S. 4 notification, (2) date of publication of s. 6 declaration, (3) date of making the award/order of compensation, and (4) date of taking possession of the land.

5.44. Section 23(1) of the Land Acquisition Act enjoins that in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall take into consideration the market value of the land at the date of publication of the notification under Section 4(1). The

importance of a notification under S. 4 is that on the issue of such notification the land in the locality to which the notification applies is in a sense frozen. This Act of freezing becomes necessary because the mere issue of a notification immediately brings about an artificial rise in the price of the land which may be sustained in many cases. The owner is certainly entitled to have a just and fair price for his land but he is not entitled to a highly inflated and spurious price at the cost of the community, as represented by the State, specially when this inflation is the direct consequence of a notification under Section 4(1) itself.

5.44A. The freezing takes place in two ways. Firstly, the market value of the land to be acquired has to be determined on the date of notification under S. 4(1): (See S. 23(1), firstly. Secondly, any outlay or improvement on, or disposal of, the land acquired commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under S. 4(1) cannot be taken into consideration at all in determining compensation (see S. 24, seventhly).

5.45. The date with reference to which the market value is determined has undergone changes from time to time. In the Act of 1870, S. 24 provided that the market value should be fixed on the basis of the value at the time of awarding compensation. This date was changed in the Act of 1894 to the date of the publication of notification under S. 6. This was changed in 1923 when the market value on the date of publication of S. 4 notification was made the yardstick for measuring compensation. This was done as S. 5A was introduced for the first time in the Act and it was then felt that the insertion of S. 5A would create a time gap between the notification under S. 4 and the actual acquisition. The date of S. 4 notification was accepted as the crucial date on the principle that in calculating compensation it was fair to exclude appreciation due to the land having been notified for a scheme for which it was sought to be acquired. The principle of excluding appreciation as a result of S. 4 notification has been there for a long time, and is in keeping with the laws on the subject prevailing in other countries also.

5.46 *Determination of market value on the date of notification under section 4—whether violates Article 31(2).*—In *Udai Ram Sharma v. Union of India*⁴⁸ the Supreme Court (by a majority of 3:2) while conceding that the underlying principle of the Act of 1894, in so far as it has fixed Section 4(1) notification as the date of valuation, was to ignore all increments in value of the land due to

⁴⁴. Cripps 4-003, 4-055, 4-178. See also Halsbury's Laws of England, Vol. 10, Para 180, p. 106. Notice to treat means the notice required to be given by the undertakers authorised to take land, demanding from the interested persons particulars of their interests in the land ascertaining their willingness to treat for the purchase of the land. In some statutes notices of intention to take land are treated as having the same effect as notices to treat; and in certain other statute such a notice is deemed to have been served on a date specified therein. *Ibid*, Para 179.

⁴⁵. *Ibid* 4-055.

⁴⁶. Australian Lands Acquisition Act, 1906-1934, Sec. 29.

⁴⁷. In *Grase Bros. v. The Commonwealth*, 72 C.L.R. 269

⁴⁸. W. P. No. 114 etc. of 1966 and 35 of 1967 decided on 7-2-1968.

the setting a foot of the acquisition proceedings whereas due to the ever spiralling of prices all over India land values are mounting up all the time in all the States, specially round about big cities, an occurrence quite unconnected with the issue of a notification under section 4(1) held that (1) it cannot be said that because owners of land are to be deprived of all the increments due to the latter phenomenon it must be held that there is a violation of Article 31(2), and (2) legislative competence to acquire land under the provisions of the Act cannot be challenged because of constant appreciation of land value all over the country due to the prevalent abnormal inflation. There must be some time lag between the start and conclusion of land acquisition proceedings and in principle there is nothing wrong in accepting the said start as the date for valuation. Moreover, Sections 4 and 23 of the Act are protected by article 31(5)(a) of the Constitution.

5.47. This matter was again agitated before the Supreme Court in *Balammal v. State of Madras*⁴⁹ but the Court unanimously held that "in *P. Vajravelu Mudaliar's*" case it was decided that the law which determines the market value as at the date of the notification under S. 4(1) of the Land Acquisition Act does not offend Article 31(2) of the Constitution. This authoritative interpretation shows that fair and equitable considerations can be ignored under the existing law to the detriment of the land-holder and we have, therefore, made recommendations in the coming pages so that the law in its operation may become more equitable.

5.48. **Changes made by the States.**—The Rajasthan Act has fixed the date of declaration under Section 6 and the Bihar Act has fixed the date of Section 6 declaration if there has been no notification under Section 4(1) for determining the market value. The Kerala Act (for project purposes), the Madhya Pradesh Act (for Bhopal area) and the Rajasthan Act (for housing schemes) have also made changes in respect of the date for determining the market value. (See appendix).

5.49. With reference to the relevant date for determining compensation, the suggestions have been varied. Some persons preferred the date of declaration whereas the others have urged that it should be the date of the award/order of compensation or the date of parting with the possession of land. In support of the view that the date of declaration should be the relevant date, it has been urged that the Government should make its final decision to acquire the land for a public purpose on this date.

5.50. Those, who advocated the date of possession as the material date for determining compensation, have pointed out that the title of the owner is extinguished when the Collector takes possession

of the land and that, therefore, compensation should be paid on the date of the vesting of the land in the ownership of the Government.

5.51. Those who argued that the material date should be the date of the award/order of compensation have represented that this would be the best date in as much as it may not be feasible to fix the date of possession as the material date in normal cases of acquisition where the Collector has to make an award of the compensation before taking possession.

5.52. We have carefully considered the above suggestions and are of the view that acceptance of any one of them would create complications.

5.53. In case the market value is to be determined from the date of declaration under Section 6, there will be many sham and colourable transactions for the sale of land after the date of notification under Section 4 for creating evidence of increase in the market value near about the date of declaration under Section 6. While the Courts do ignore fictitious transactions, the fact remains that they do give rise to needless litigation.

5.54. There are such other measures which the land-owners are also likely to adopt for obtaining enhanced compensation. One of such measures is by resorting to the delaying tactics by taking the matter to the Courts after issue of notification under Section 4 on one or the other ground. As a result of delay in the issue of declaration under Section 6, the land-owners will get increased compensation on the basis of market value existing on that date. Moreover, in some cases, the land-owners may be able to obtain interim injunctions from the Courts restraining issue of the declaration of intended acquisition. In such an event, the acquiring authority would not be in a position to issue the declaration under Section 6 before the disposal of the case. The prices may soar up by the time the declaration is issued. Surely, the landowners cannot be allowed to profit out of their wrongs i.e., obtaining of stay orders where they are not warranted.

5.55. In view of the above considerations, we are not prepared to agree to the suggestion that the date of declaration under Section 6 should be made the material date for determining the 'market value'.

5.56. Similar difficulties would arise even if the date of the award/order of compensation or that of possession were prescribed as the relevant date. The possibility of landowners getting the date of the award/order/possession postponed by indulging in needless litigation cannot be ruled out. Moreover, under the scheme suggested by us, the Collector has to make an offer of the estimated amount of compensation after consulting the appropriate Government etc., and possession cannot be taken by him unless the estimated amount

⁴⁹. C. A. Nos. 489 etc. of 1966 decided on 23-2-1968.

⁴⁰. (1965) 1 SCR 614.

of compensation is either paid to the party or deposited in the Court. The Collector has thus necessarily to apply his mind to the question of the amount of compensation much before he takes the possession. It is not, therefore, practicable to fix the date of possession for determining the market-value except in cases of emergencies where possession proceeds the offer of payment.

5.57. Similar difficulties would arise if we are to fix the date of the offer of compensation as the material date for determining the market-value. Evidence of market value can easily be gathered with reference to a prior and fixed date such as that of the Section 4 notification but not with reference to a future date such as that of offer of the estimated amount of compensation or that of taking possession.

5.58. It was also suggested to the Law Commission that the date of determining the market value should be changed to the date of the taking of possession of the land, but the Commission found no reason to accept this suggestion in view of the fact that under the scheme of the Land Acquisition Act proposed by them there would not be much lapse of time between the date of the notification under Section 4 and taking possession of the land (*i.e.* 12 months which may be extended to 16 months)⁴¹

5.59. Under the scheme suggested by us, also time-limits for the completion of the acquisition proceedings have been prescribed and there would not therefore be much time-lag between the date of Section 4 notification and that of taking possession.

5.60. We are of the view that the market-value of a property should not be determined by the average market-value of the property over a period of 5 years preceding the Section 4 notification as was done under the Land Acquisition (Madras Amendment) Act, 1961. Evidently such average value deprives the owner of property of a substantial part of compensation and is inconsistent with the concept of the market-value of property which a willing purchaser would pay to a willing seller as the value of property on the date of acquisition.

5.61. We are aware that much of the criticism to the retention of the date of publication of notification under Section 4 is due to the fact that acquisition proceedings take a very long time with the result that the land-owners get compensation which is not fair, as by the time compensation is paid, the land value might go up considerably. It is for this reason that we have suggested that in normal cases of acquisition, the payment of the estimated amount of compensation should be made to the person interested before possession is taken. Moreover, we have recommended that in normal cases of acquisition, the acquisition proceedings from the date of notification under Section 4 up

to the date of reference to the court should normally be completed within a period of one year. This period may be extended by another three months if there are sufficient reasons to be recorded in writing. We have, thus, given 15 months in all to the acquiring authority to complete all the formalities of acquisition commencing from the notification under Section 4 up to the date of reference to the Court. Under our scheme, the notification issued under Section 4 would stand automatically cancelled in case the proceedings are not completed within the prescribed period. The effect of such a provision would be that Government would be required to issue a fresh notification for acquisition of the same land, if necessary, and in that event, the land-owner would be entitled to get the benefit of rise in price, if any, which might occur between the date of the previous notification and the subsequent one.

5.62. We are making distinction between the normal cases of acquisition where a small pocket of land is acquired for public purpose like setting up of a Post Office, construction of road or hospital etc., and big projects requiring acquisition of large tract of land as for example setting up of a new town, construction of a big dam etc.

5.63. It is only in the case of big projects that a speculative rise in prices takes place. We have already recommended that market price of land may be determined with reference to the date of the notification under Section 4 in normal cases of acquisition. Different considerations arise, however, in the case of acquisition for large projects. It may be recalled that the Prime Minister Jawaharlal Nehru had repeatedly stated in Parliament in the course of debate on the Constitution (Fourth Amendment) Bill, 1955, that the intention of the Government was to give market price to the small land-holders and that Government was not in a position to pay the market price only in cases of large scale acquisitions of land required for carrying out colossal programmes of social reforms which were necessary for the establishment of a welfare State. Before we proceed to make our recommendations in regard to compensation for the land required for big projects, it would be helpful to examine briefly the legislative measures adopted by certain States to check the speculative rise in the prices.

5.64. The Land Acquisition (Madhya Pradesh Amendment) Act, 1959, (Act No. 5 of 1959) is one of such measures. Consequent on the declaration of Bhopal as the Capital of Madhya Pradesh, there was a sudden and considerable appreciation in the value of land in the Bhopal City and the surrounding areas. A large area of land, was needed by the State Government for the construction of residential buildings as well as offices and in view of the sudden rise in price of the land, the State Government would have been required to pay a very high price in each case. Almost all the lands that would be needed for construction of buildings was

⁴¹. Tenth Report "Law Acquisition and Requisitioning of Land," 1958, p. 28.

rocky and was of little value except for building purposes. The State Government and Municipal Board would have been required to incur large expenditure in providing roads, drainage, water works, lighting arrangements in the development of the locality. The owners of the land were not prepared to contribute anything towards such heavy expenditure and there was hardly any justification to entitle the land owners to such unearned increment from land. It was, therefore, decided by the State Government to amend the Land Acquisition Act, 1894, in its application to the Bhopal area so as to provide for acquisition of land in Bhopal on payment of reasonable compensation. It was decided to restrict the price of the land as on 1-10-1955 (the date of the publication of States Reorganisation Commission's Report) and 25% of that value of land extra in view of the appreciation of the price plus 15% for the compulsory nature of acquisition as usual. The Bill was accordingly introduced which eventually became law with the assent of the President. The Madhya Pradesh Act was challenged in the High Court and it was held by the Court that the Act was a valid piece of legislation and it was not unreasonable and improper to compute the market value of the land with reference to a date proximate to the date of acquisition so as to exclude speculative rise in determining the market value of the land⁴².

5.65. The Madras Legislative Assembly passed a Bill amending the Land Acquisition Act in 1961 with a view to enabling the State Government to acquire lands required exclusively for housing scheme at prices which would exclude consideration of increase due to speculative transactions. The market value was to be determined as on the date of publication of notification under Section 4(1) of the Act, or its average market value during the five years preceding that date, whichever was less. A further amendment accepted was that the amount of solatium be reduced to 5%. The Revenue Minister of the State Government while initiating an amendment of the Act to the effect that the amount of compensation to be awarded should be determined on the basis of actual use to which land was put on the date of publication of notification under Section 4(1) of the Act and not on the basis of suitability or applicability of the land for any such use, stated as follows:—

"In recent times there had been a large abnormal increase in the market-value of the land in and around the city of Madras and other towns. Consequent on the industrial expansion of the country speculative transactions in lands were also on the increase tending to push up land prices. The consequence had been payment of heavy amounts as compensation to private landholders by the Government for acquisition of lands for the very necessary and essential schemes of housing. Naturally such large payments from the public exchequer to

private individuals had limited the quantum of housing schemes that could be taken up by Government. Therefore, it had become necessary to modify and lay down suitable principles for payment of reasonable compensation for lands acquired for housing schemes."

5.66. The Madras amendment Act was challenged in the Supreme Court and the Court decided in the case of *Vajravelu Mudaliar*⁴³ vs. *Special Deputy Collector* that the amending Act did not violate Article 31(2) in as much as the exclusion of value on the basis of suitability or special adaptability of land or reduction of amount of solatium only amount to the payment of inadequate compensation which was not justiciable and that as there was no fraud on powers, these provisions in the amending Act should not be struck down. That Act was, however, declared *ultra vires* under Article 14 as discriminatory as it had provided for acquisition of land for a housing scheme on lesser payment than what the owner would get for the same land, if acquired for public purpose like hospital or university under the principal Act.

5.67. Sections 46 and 48 of the Kerala Land Acquisition Act, 1961, contain special provisions for the acquisition of the land for projects. In acquiring lands for project purposes, it is necessary that the project should be made known to the public. Section 47(A) of the Act provides for specifying project areas by notification in the Gazette wherein the opinion of the Government there is a likelihood of speculative rise in the land value in the project area as a result of the project sponsored by the Government. In determining the amount of compensation to be awarded for land acquired under the project, the Court is required under this Act to take into consideration—first, (a) the market value of the land at the date of the publication of the notification under Section 47-A, the value of any improvements to the land effected after that date and before the date of the publication of the notification under sub-section (1) of Section 3, and where there has been a normal rise in land value in the locality in which the project area lies after the date of the publication of the notification under Section 47A, and before the date of the publication of the notification under sub-section (1) of Section 3, such rise in price subject to a maximum of twenty per cent of the market value of the land at the date of the publication of the notification under Section 47A, or (b) the market value of the land at the date of the publication of the notification under sub-section (1) of Section 3, whichever is less.⁴⁴

5.68. The provisions of the Kerala Act relating to acquisition of land for projects cannot be applied to any acquisition of land in a project area where the notification under Section 3(1) in respect of acquisition is not published within 3 years from the date of publication of the project notification

⁴². AIR 1961 M.P. 280—*Satish Kumar Man Mohan Sahu v. State of M.P. and others.*

⁴³. SCR (1965) I 614.

⁴⁴. See Section 25(1) of the Kerala Land Acquisition Act, 1961 as amended by the Kerala Land Acquisition Amendment Act, 1966.

under Section 47A. Section 3(1) of the Kerala Act corresponds to Section 4(1) of the Central Land Acquisition Act.

5.69. Under the Maharashtra Regional and Town Planning Act, 1966, it has been provided in Section 126(3) that the market value of the land shall, where land is to be acquired for the purpose of a new town, be the market value prevailing on the date of notification designating the area as a site for new town, and in any other case at the date of the publication of the Draft Development Plan or as the case may be the Draft Town Planning Scheme.

5.70. We have considered the above mentioned legislative measures adopted by the States for checking the speculative rise in land prices. It is a matter of common knowledge that speculation in land's prices usually takes place when the intention to implement big projects including Town Planning Schemes are made known to the public before hand. Broadly, speaking, they proceed upon the principle that any rise in land value after the declaration of the intention of the Government to acquire land or on account of specific State action is not a legitimate rise in price to which the owner or the person interested in the land is entitled.

5.71. It is pertinent to note here that the Supreme Court had recognised even before the enactment of Constitution (Fourth Amendment) 1965, in *Bela Banerjee's* case that in cases where the acquiring authority had made its intention well-known for acquiring the land it may be permissible to fix a date anterior to the date of notification under Section 4 so as to check fictitious transactions in the sale of the land.

5.72. Having regard to all the relevant considerations, we are of the view that where land is to be acquired for purposes of big projects including for the purpose of new town or town planning, the market value prevailing at the date of the publication of the project notification should be the basis for determining the compensation. A project for which it is proposed to acquire land covering an area of not less than 100 acres may be considered to be a 'big project' for this purpose. However, it is not desirable to fix compensation rigidly on the basis of the market rate prevailing on the date of the publication of the project notification, as in a growing society some sort of appreciation is inevitable and since as a result of the implementation of the project there would be a rise in the income of the owners of the adjacent properties, there is no reason why the price of the land proposed to be acquired should be frozen.

5.73. With a view to preventing the undue profiteering and speculation, we suggest that in determining the compensation an additional allowance should be made for the normal rise in the land value during the period between the publication of the project notification and that of the Section 4(1) notification subject to a maximum of 25 per cent of the land value on the date first mentioned. We further suggest that the special provisions with

regard to the project acquisitions should not apply to any acquisition of land in a project area where notification under Section 4(1) in respect of the acquisition is not published within 2 years from the date of publication of the notification declaring the project. Such a restriction would be reasonable and in the interest of the general public.

5.73A. We suggested the above principles because we find no equity or justification for granting the acquiring authority the right to freeze the price of land not for the schemes in hand but also for those nebulous schemes which may or may not be planned at some future undetermined time. It is true that big projects take quite some time to materialise but the State cannot take away the property of its citizens which in many cases is also their means of livelihood on the ground that the project is for the good of the community and they should wait for years and years before they will be paid the price of that land and that too at a rate prevailing in the dead past. The salutary maxim of not biting more than one can chew can be modified in favour of the State but it cannot be ignored to such an extent that the property of the citizen ceases to be his property and becomes the property of the State.

5.74. We do not approve of the formula in the Kerala Act which envisages the payment of an amount of market value whichever is less either on the date of the publication of the project notification or the date of publication of S. 3(1) [corresponding to Section 4(1) of the Central Act]. In our view such a formula would give an unbridled discretion to the executive to fix the date of the Section 4 notification according to its convenience within the specified time.

5.75. We have recommended elsewhere that betterment levy may be imposed upon the land which has been benefitted by the development schemes or projects. Before we conclude the discussion, we wish to refer to two private Members' Bills which were introduced sometime back in the Parliament. Shri S. C. Samanta, Member, Lok Sabha, introduced a Bill in 1969 which sought to amend *inter alia* Section 23 of the Act so as to substitute the words "at the date of acquisition" for the words "at the date of publication of notification under Section 4". In other words, the amending Bill sought to make compensation payable on the basis of market value prevailing on the date of possession on which date the title of the owner to the land is extinguished. Another private Member's Bill was introduced by Shri Hem Raj, Member Lok Sabha, in 1968; that bill also sought to amend Section 23 for making the compensation payable on the basis of the market value on the date of acquisition or taking possession. The Bill also sought to raise the amount of solatium from 15% to 40%. In the Statement of Objects and Reasons of both the Bills, it was stated that the amendment was proposed as there was long intervening period extending over several years between the date of notification under Section 4 and the completion of acquisition with the result that the land-owner gets compensation which is wholly

insufficient to buy an equivalent area of land with similar advantages elsewhere. It was further stated that the amendment was necessary as the aim of a Welfare-State should be to award a fair and reasonable price for land at the time of acquisition.

5.76. We are well aware of the feelings of the Members of Parliament and other distinguished persons who appeared before us for giving evidence. We have already given above our reasons for retaining the date of notification under Section 4 as the relevant date for assessing market value and we think that the measures which we are recommending would substantially meet the object set out in these Bills and also remove the hardships which the owners of land face today when their land is acquired.

D. Reinstatement Value

5.77. When the land is used for some particular purpose not of a commercial nature, such as for a public park or for a church or school, it is very difficult to estimate its value for the purpose of assessing compensation for compulsory purchase as there is no general demand or market for land for those purposes. One method adopted is known as equivalent reinstatement, by which is meant that the amount of compensation to be awarded is to be assessed according to the cost of acquiring an equally convenient site and erecting equally convenient premises⁴⁴.

5.78. This basis of compensation is usually applied to such properties as churches, church halls, schools, hospitals and the like but is not limited to charitable uses.

5.79. The position in the United Kingdom has been summarised by Cripps in Para 4-203 of his celebrated work on Compulsory Acquisition of Land⁴⁵, where it is observed as follows:—

Before the Acquisition of Land Act, 1919 reinstatement value, instead of market value, was sometimes given so as to give proper effect to the principle of compensation on the basis of value to the owner. Generally, it was only given in respect of property which is of such a nature (for example, a school, church, hospital, house of exceptional character, business premises in which the business could only be carried on under special conditions or by means of a special licence) that there was no market or general demand for such property; and a market value deducted from the income derived would not constitute a fair basis in assessing the value to the owner.

5.80. This rule which was substantially enacted in Rule 5 of Section 2 of the Acquisition of Land

Act, 1919, is re-enacted as rule 5 of Section 5 of the Land Compensation Act, 1961 of the United Kingdom, and provides as follows:—

"Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Lands Tribunal is satisfied that reinstatement in some other place is bonafide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement."

5.81. The application of the principle does not depend on the state of the land or buildings but on the purpose to which it is devoted⁴⁶, and it does not apply to buildings and works which are to be excluded from value as being illegal or are otherwise excluded⁴⁷. The reasonable cost of equivalent reinstatement includes the cost of acquiring substituted premises and the cost of converting them so that the former business may be carried on substantially unaltered and undiminished⁴⁸. Reinstatement need not necessarily be in exactly the same locality⁴⁹.

5.82. This principle has not specifically been included in S. 23 of the Land Acquisition Act, 1894. During the consideration of amendment of Land Acquisition Act, 1870 by the Council of the Governor General, Dr. Rashbehari Ghose, a member of the Council proposed the following amendment for substitution of the word 'market value' in Section 23(f) (Section 24 of Act of 1870):—

"'Value' shall mean market-value when the property has a market value, but in cases where the property has no market value the value shall be deemed to be such a sum as will enable the owner to replace the premises or lands taken by premises or lands which would be to him of the same value."

5.83. He stated that the amendment was necessary in view of the judgment of the Madras High Court (Affirmed by the Privy Council) which denied compensation for the acquisition of two very ancient temples on the ground that they did not possess any market value. Dr. Ghose further stated as follows:

"A somewhat similar difficulty would arise in dealing with mansion houses in the country under the Act. There is no market for such houses, however, expensive and costly in the interior of the country. I submit, therefore, that there can be no harm in adopting the word 'value', qualified as it is by the explanation

⁴⁴. Halsbury's Laws on England, Third Edition, Vol. 10 p. 139(2).

⁴⁵. Cripps—Compulsory Acquisition of Land, 1962 edition, page 907.

⁴⁶. *Ibid* 4-204.

⁴⁷. *Ibid* 4-209.

⁴⁸. *Ibid* 4-210. See per Atkin L. J. in *A and B Taxis v. Secy. of State for Air*. (1922) 2 K. B. 328.

⁴⁹. *Aston Charities Trust Ltd. v. Stoney Corporation* (1952) 2 Q.B. 642 and see *Howrah House Trustees v. London Country Council* (1959) 9 P. & CR 483.

which I am going to add to it, for the words 'market value' which are now to be found in the Bill. We should not leave all persons who might happen to have property of this valuable character liable to be expropriated, no doubt, for the most benevolent purposes, without any compensation at all; because the law as laid down by the Privy Council must be binding on every Court in this country from the highest to the lowest. I submit for the reasons already stated, that it is one (amendment proposed by Dr. Ghose) which ought to be adopted, as great injustice and hardship might otherwise arise in the case of property which has either no market-value, or the market-value of which cannot be ascertained in any of the ordinary modes now followed by our Courts."

The majority of the Council members opposed the amendment because that was not a proper stage to consider it and the matter was considered in great detail by the Select Committee which did not favour defining the term 'market value' and had preferred not to disturb the meaning attached to it by the various decisions of the High Courts. The amendment was put but negatived. Abstracts of the proceedings of the Council are annexed.

5.84. The question of awarding compensation on the principle of reinstatement was considered by the Supreme Court in *State of Gujarat v. Vakhtsinghji Sursinghji Vachela & Ors*¹¹. In this case, the question for consideration was under the Bombay Taluqdari Abolition Act, 1949, compensation should be paid for the acquisition, *inter alia*, of irrigational bunds, tanks and wells. The Collector had awarded compensation on the basis of Himayat and water rates of assessment but the High Court awarded compensation on the basis of twenty-five times the annual profits derivable from the properties. The interested persons in appeal contended that the compensation should be awarded on the basis of reinstatement value, the Supreme Court while conceding that in some special cases awards have been given according to the cost of acquiring an equally convenient land or premises, thought it sufficient, for the purpose of the case, to say that the method of reinstatement value should not be adopted where the market value deducted from the income derived from the lands would fairly compensate the owner, and in no case can reinstatement value be given unless reinstatement in some other place is *bonafide* intended. As in this case the High Court has found that there was no intention to reinstate the bunds, the Supreme Court agreed with the High Court's decision that the owners could be fairly compensated by giving the market value deducted from the estimated yield and that the value of irrigational bunds, tanks and

wells is not what they cost but what they yield in annual income. Therefore, the application of the reinstatement method was rejected in this case.

5.85. The principle of reinstatement has been recognised in Australia also¹².

5.86. We have considered the various aspects and the fact that the principle of reinstatement has been recognised by the Indian Courts. We, however, feel that it is necessary that this principle should receive statutory recognition. We, therefore, recommend that the principle of reinstatement as enacted in Rule 5 of Section 5 of the Land Acquisition Act, 1961, of the United Kingdom may be adopted in India.

E. Solatium

5.87. Sub-section (2) of Section 23 requires the court to award in addition to the market value of the land, a sum of 15% on such market value, in consideration of the compulsory nature of the acquisition. This statutory allowance over and above the market value of the land was intended to compensate the owner for his disinclination to part with his property—a factor which has to be left out of consideration in estimating the compensation. Trees standing in the land are a component part of the land acquired in view of the definition of land under Section 3(a). It has, therefore, been held by the Supreme Court in the recent case that the court is bound to allow the 15% allowance provided by Section 23(2) of the Act over the value of trees as well¹³.

5.88. In England under the Land Clauses Act, 1845, there was no specific provision for the grant of solatium. It was, however, customary to make an addition of 10 per cent of the value of the land so as to cover the incidental cost and charges to which the land owner has been subjected, and if no such addition was made, incidental costs and charges were to be considered in assessing the amount of compensation¹⁴. However, the Land Compensation Act, 1961, Section 5, rule 1 (which re-enacted Section 2, Rule 1 of the Act of 1919) provides that no allowance shall be made on account of the acquisition being compulsory¹⁵. This provision *inter alia* created dissatisfaction in England and regarded as unethical and not warranted by the social and economic conditions of today which are different from what they were in 1919 when this rule was made¹⁶.

5.89. In India too, it was suggested to the Law Commission, that the payment of solatium should be excluded because there has been an abnormal increase in land values but the Commission did not approve of this suggestion as, in their view, it would not be expedient or proper to adopt in our

¹¹. C.A.s Nos. 517 & 524 etc. of 1965 decided on 8th April, 1968.

¹². (1928) 7 L.V.R. 65.

¹³. Chaturbhuj Pande and Ors. v. Collector of Raigarh 1969(1) S.C. W.R. 320(324).

¹⁴. Cripps, Compulsory Acquisition of Land, 1962, 4-046.

¹⁵. *Ibid* 4-202.

¹⁶. Fitzgerald, 'The Law and Ethics of Compulsory Acquisition of Land, Current Legal Problems, 1952.

law, for purposes of determination of compensation, principles which have been severely criticised by jurists and have caused dissatisfaction among the public in England. The Commission have further expressed the following view:

"It is not enough for a person to get the market value of the land as compensation in order to place himself in a position similar to that which he would have occupied, had there been no acquisition; he may have to spend a considerable further amount for putting himself in the same position as before. If, for example, the only property a person possessed was three acres of arable land and he was deprived of this under the compulsory power of acquisition, he would no doubt get the market value of his property; but he would not be in a position to provide himself with a vocation to which he had been all along accustomed. He must find suitable land in or about the locality where he resides which may not be easily available and he may have to wait and spend more than the amount of compensation he has obtained. As pointed out by Fitzgerald, the community has no right to enrich itself by deliberately taking away the property of any of its members in such circumstances, without providing adequate compensation for it. The only reason urged in support of the omission of S. 23(2) is that there has been an abnormal increase in land values..... But the rise in land values generally corresponds to the rise in the price level and the fall in the value of money. We think, therefore, that the reasoning on which the proposed omission of S. 23(2) is based cannot be supported."

5.90. This view of the Law Commission has been endorsed by the Group of Experts".

5.91. The Supreme Court has held that it is within the powers of the Legislature to fix the quantum of solatium in acquiring the land".

5.92. However, in the Uttar Pradesh Act, the provisions for payment of solatium have been deleted. In the Rajasthan Act, the amount is reduced to 10% except in the following cases in which the solatium is not to be paid:

1. When in cases of urgency, possession of an area certified to be an unhealthy one by a District Magistrate, is taken; and
2. When any land has been acquired for the purpose of improvement or development trust unless such land consists of (a) building in the actual possession of the owner or his tenant or occupied free of rent by a relative of the owner and land appurtenant thereto, or (b) gardens not let out but used by the owner.

5.93. We feel that the omission of solatium in the

State Acts is not only not fair to the persons deprived of their properties in these States, but is a clear violation of the spirit of the Land Acquisition Act for it wants to put acquisition by normal legal procedures and acquisition by compulsion on the same level.

5.94. In this context, we would also like to refer to the Land Acquisition (Amendment) Bill, 1968 (Bill No. 30 of 68) moved by Shri Hem Raj in the Lok Sabha in 1968, seeking to amend Section 23 of the Land Acquisition Act *inter alia* for the purpose of raising the amount of solatium from 15% to 40%. In the Statement of Objects and Reasons for the Bill, it is stressed *inter alia* that the owners or persons whose interests suffer and are ousted are granted compensation which is wholly insufficient to acquire land at reasonable price elsewhere.

5.95. We have carefully considered the recommendations of the Law Commission and the report of the Group of Experts on the subject. We have also given due consideration to the objects underlying the Bill moved by Shri Hem Raj. The payment of market value alone can not be treated as sufficient. This fact can not be ignored that the property is not transferred by the owner to the Government voluntarily but by compulsion of law. Therefore, some sort of solace must be given to the owner with regard to the property acquired. We agree with the recommendation of Law Commission and recommend that the provisions of solatium which has been a part of our law for about 100 years (the provision of solatium existed in the old Act of 1870) [Section 42] may be retained.

5.96. The next question we have to examine is whether the quantum of solatium provided under the existing law is sufficient. The overwhelming opinion of the persons coming from various walks of life who appeared before us and gave evidence was in favour of increasing the amount of solatium. In the case of acquisition of agricultural land, the land holder is uprooted and is rendered homeless. He is not only being deprived of his land but also of his occupation and employment. There should be sufficient provision for him for purchase of an alternate land and employment. Similarly in the case of urban land with houses thereon the owner may have to find suitable alternate accommodation for himself which may entail a large extra expenditure for him.

5.97. We feel that an adequate provision for the payment of solatium is a convenient means of providing for the cost of reinvestment and other incidental expenses which the owner might incur in connection with the acquisition of his land. We, therefore, recommend that the amount of solatium should be raised from 15% to 30%.

5.98. One of the factors which has weighed with us in making the above recommendation is that under the scheme suggested by us, the date of Section 4 notification has been made the material date

¹⁶. pp. 26-27 of their Report.

¹⁷. pp. 21-22 of their Report.

¹⁸. *Vajravelu Mudaliar vs. Spl. Deputy Collector* (1965) 1 SCR 614.

for determining the market value for the purpose of compensation. Evidently the fixation of this date will deprive the owner of any increase in value which may take place between this date and the date of declaration/possession. A large body of persons adversely affected by land acquisition have suggested to us that compensation should be made payable either on the date of declaration or the date of possession. We have already pointed out that it is not practicable to provide for determination of compensation with reference to the date of declaration or possession. These considerations have also *inter alia* influenced us in suggesting an increase in the quantum of solatium.

F. Set-off for Betterment of Adjoining Land

5.99. Section 24, clause sixthly provide for ignoring the increased value of the other land of the person interested likely to accrue from the use to which the land acquired will be put. It is the market value of the acquired land which has to be determined and it should not be affected by anything which is likely to happen to the other land after the acquisition. The object of the provision appears to be to prevent any claim being made by way of set-off on this account by the acquiring authority where a claim was advanced by the owner for injurious affection to his other land. In *re-Lucas and Chesterfield Gas & Water Board*¹, it was remarked "It seems to me that such a set-off ought not to be allowed since it would lead to such absurd consequences. Suppose a man has two neighbouring houses, the one benefited the other injured, by the company's works, is he not to get compensation for the one that is injured because the other is benefited? I cannot accede to this proposition that any benefit done by the company to the premises must be deducted by way of set-off against the damage."

5.100. Where land is acquired compulsorily it may so happen that other adjoining land belonging to the same owner is increased in value by the carrying out of the acquiring body's undertaking on land taken. Neither the Lands Clauses Acts nor the Acquisition of Land (Assessment of Compensation) Act, 1919 of the U.K. made any provision whereby the acquiring authority might benefit from this increase in value. Such a provision was, however, made in a number of Special Acts².

5.101. Section 7 of the 1961 Act, which applies to all cases of acquisition, except acquisition under certain Acts which have already provided for set-off, provides that where at the date of notice to treat, the owner has an interest in land contiguous or adjacent to the land acquired, any increase in the value of that interest due to development under the acquiring body's scheme is to be deducted from

the compensation payable for the interest in land acquired³.

5.102. Under the above principle of set off, the compensation payable to an owner may be reduced by the increase in the value of his interest in the adjacent land. But there are also cases where the compensation for land taken will be increased on account of the injurious affection to other land held with it due to the acquiring body's scheme. In either case, if such adjacent land is subsequently acquired, the operation of Section 6, which requires increases or decreases in value due to the scheme to be ignored, might result in an owner either being paid a certain amount of compensation twice over or deprived of it on two occasions⁴. To avoid such a result Section 8, provides that where an increase in the value of an interest in other land has been taken into account under S. 7 (i.e. set-off) it must not be disregarded under S. 6 or taken into account under S. 7 in connection with a subsequent acquisition of an interest which is the same as that previously taken into account or the person entitled to the interest acquired is the person who on the previous acquisition was entitled to the interest previously taken into account. It further provides that where a diminution in the value of an interest in other land has been taken into account in assessing compensation for injurious affection it must not be disregarded under S. 6, in connection with such a subsequent acquisition⁵.

5.103. In Australia, it has been laid⁶ down that in determining the compensation, the enhancement or depreciation in value of other land adjoining the land taken or severed therefrom of the person entitled to compensation by reason of the carrying out for the public purpose for which the land was acquired shall be set-off against or added to the amount of the value and damage to the land.

5.104. In India, the law on the subject as laid down in the Land Acquisition Act, 1894, has been clearly stated by the Privy Council in *Secretary of State for Foreign Affairs v. Charlesworth Pilling & Co.*⁷ Section 23(1) (clause Firstly) and 24 (Clause fifthly and sixthly) "provide that land is to be taken at its market value on a given day, and that the court is not on the one hand, to give more because the object for which it is taken is likely to increase its value, nor, on the other hand, to give less because the same object is likely to increase the value of the owner's remaining land".

5.105. There are some local exception enactments in respect of Section 24(6). Thus Section 64(1) of the City of Bombay Improvement (Transfer) Act, 1925, states:

"The Court shall take into consideration any increase to the value of any other land or

¹. (1909) 1 K. B. 16.

². D. M. Lawrence, *Modern Methods of Valuation*, 1967, P-337.

³. *Ibid*, pp. 337-338.

⁴. *Ibid*, pp. 338-339

⁵. Lawrence etc. P. 339.

⁶. S. 19 Land Acquisition Act, 1901.

⁷. 28 Ind. App. 112(141).

building belonging to the person interested likely to accrue from the acquisition of the land or from the acquisition, alteration or demolition of the building."

5.106. *Vide* also Section 78 of the Calcutta Improvement Act, 1911, and provision in the Calcutta Improvement (Amendment) Act (Bengal Act VII of 1931).

5.107. We have carefully considered the law on the subject and we feel that the land holder whose land is acquired should not be subjected to a claim of set-off while awarding compensation in respect of the land acquired taking into account the other land which has not been acquired but which has been benefited by the proposed scheme for acquisition. We are, however, separately making recommendations that the appropriate Governments may consider the question of charging of "betterment levy" upon the lands which have been benefited by the project or development in cases where it is not already levied. We find that most of the State Governments have already levied betterment fee on the lands the value of which has been appreciated as a result of irrigation facilities provided by the Projects undertaken in the Five Year Plans. Some of the Town Planning and Town Improvement Acts have also included provisions for the levy of betterment fee on urban lands. We feel that charging of a 'betterment levy' from the land holders which have been benefited by the scheme or development initiated by Government would be more equitable than the allowing of a set-off in respect of the adjoining or contiguous land sought to be acquired. The betterment levy will be charged from all the persons benefited by the development scheme while in the case of set-off under the Land Acquisition Act only the persons whose land has been acquired and who owns adjoining land not forming part of acquisition will be affected. This will place them in a disadvantageous position *vis-à-vis* those whose lands have not been acquired and thus create an immoral and unjustifiable discrimination. We, therefore, recommend that clause sixthly of Section 24 which does not permit any set-off may be retained in its present form.

G. Improvements made after issue of Notification for Acquisition.

5.108. Section 24, clause seventhly provides that the Court shall not take into consideration any outlay, or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of Section 4(1) notification. The object of the provision is to prevent any outlay on the land being made for the purpose of enhancing the compensation. The law permits compensation on the basis of market-value having regard to the state of the land as on the date of the notification under Section 4(1).

5.109. The position of the law in the United Kingdom is the same in this regard. The owner's power of dealing with his property ends when the notice to treat is served and after notice to treat, no onerous interest, either in the land taken or in that injuriously affected, can be created by the owner to the prejudice of the acquiring body.

5.110. The Law Commission has suggested modification under this clause which provides that while improvements are not ordinarily to be taken into consideration by the court, it shall take them into account where the improvements were necessary for the maintenance of the building in a proper stage of repairs". The Mysore Land Acquisition (Mysore Extension and Amendment) Act, 1961, has adopted a clause as recommended by the Commission.

5.111. In the Calcutta Improvement Act, 1911, the clause seventhly as incorporated in Clause 10 of the Schedule runs thus:

"Any outlay on addition or improvement to land acquired, which was incurred after the date of publication of the declaration under Section 6, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repairs."

5.112. A similar provision is in clause (12) of the schedule in the U.P. Town Improvement Act, and clause (11) of schedule in the Berar Act V of 1920. So also in Section 64(2) of the City of Bombay Improvement Trust (Transfer) Act, 1925. The material date in these Acts is the date of declaration under Section 6.

5.113. The Rajasthan Act on the contrary provides for disregard of 'any outlay or improvements on, or additions to, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the giving of the public notice of the proposed acquisition at convenient places on or near about the land proposed to be acquired'.

5.114. We have carefully considered the recommendations of the Law Commission and the State amendments in this regard. We are of the opinion that the provision suggested by the Law Commission may be misused to claim extra compensation for improvement as the word 'improvement' could be misconstrued. After considering the various aspects, we feel that the repairs may be emergent or otherwise. We recommend that the land holder should be entitled to compensation if he makes necessary repairs for the maintenance of the building in emergent cases after communicating to the Collector that he is doing so on account of emergent conditions. In other cases he will serve a notice on the Collector indicating that he intends undertaking necessary repairs for maintaining the

⁶⁶. *Mercer v. Liverpool, St. Helen's South Lancashire Railway* (1908) 1 K. B. 653.

⁶⁷. At p. 67 of their Report, Clause *Seventhly* of s. 22 of their Bill.

⁶⁸. Section 13 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

building in a proper state of repairs. In case the Collector does not stop him from making such repairs within a period of 60 days from the date of the service of the notice, the permission of the Collector to such repairs may be assumed. The landholder/person interested would be entitled to compensation for repairs in such cases.

H. Illegal use of Land for Building and Overcrowding

5.115. The Acquisition Land (Assessment of Compensation) Act, 1919 of the U.K. enacted *inter alia* the following rule for the purpose of assessing compensation¹⁰:

"Where the value of the land is increased by reason of the use thereof or any premises thereon in a manner which could be restrained by any court or, is contrary to law, or is detrimental to the health of the occupants of premises or to the public health, the amount of that increase shall not be taken into account."

5.116. On the basis of the law in England the States of Bihar¹¹, Punjab¹², and Uttar Pradesh¹³ have amended Section 23 to add a provision that if the market value is specially high in consequence of the land being put to use which is unlawful or contrary to public policy, that use shall be disregarded and the market value shall be deemed to be market value of the land if put to ordinary uses.

5.117. The States of Madhya Pradesh¹⁴, Rajasthan¹⁵ and Uttar Pradesh¹⁶ in the case of acquisition of land for Nagar Maha Palikas, the Calcutta (Improvement)¹⁷ and Nagpur (City)¹⁸ Amendment Acts provide an additional clause that if the market value of any building is specially high in consequence of the building being so over-crowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded and the market value shall be deemed to be the market value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding.

5.118. The Law Commission recommended¹⁹ the adoption of the provision of the U.K. Act of 1919, in their draft bill with slight changes. It has suggested substitution of the words 'market value' in place of the word 'value' to make it in conformity with the law in India on the subject. The expression 'any premises thereon' has also been deleted as the definition of 'land' in our Land Acquisition

Act is broad based to include 'premises' also. A few verbal changes have also been made by the Commission. The aforesaid provision of 1919 Act has been re-enacted in rule 4 of Section 5 of U.K. Land Compensation Act, 1961.

5.119. The Mysore Land Acquisition (Mysore Extension and Amendment) Act, 1961, has added a new clause *eighthly* to Section 24 incorporating the recommendations of the Law Commission.

5.120. The most usual application of this rule occurs when land is used in contravention of planning control imposed by law. In the United Kingdom, buildings erected in contravention of such Acts such as the Public Health Act, 1936 or Bye-laws made thereunder or the London Buildings Act, or the Bye-Laws made thereunder or the Housing Act, 1936 or the Bye-Laws made thereunder are considered to be examples of illegal use. In assessing compensation, buildings or works on the land which are contrary to law and are liable to removal are, thus, excluded and the state of land as affected by an illegal use is also disregarded.

5.121. A typical example of unlawful use is to be found in an English case of *British Electricity Authority vs. Cardiff Corporation*.²⁰ The facts of the case are that Cardiff Corporation acquired from the Electricity Authority a house, formerly a dwelling house, which had later been turned into a private hotel. The premises was occupied by the Authority as offices, but their application under Defence Regulation 68 CA for conversion from residential to office use had been refused. The office use was in consequence illegal. The Lands Tribunal accordingly did not take into account any increase in value arising from the office use. The premises were valued as a private hotel.

5.122. We have carefully considered the provision made in the English Act and the recommendation of the Law Commission. We have also noted that some of the State Governments have already enacted amendments on the lines of the English Law on the subject. In actual practice, a purchaser would discount the enhanced price because of any known illegal or restrainable use even in an open market transaction. We, therefore, recommend that the rule as enacted in United Kingdom under Section 5, Rule 4 of Land Compensation Act, with changes made by the Law Commission should also be adopted in this country.

¹⁰. S. 2(4) of the Acquisition Land (Assessment of Compensation) Act, 1919.

¹¹. Bihar Act XXIII of 1948, sub-para 3.

¹². Punjab Act IV of 1922 s. 59 and sub cl. 10.

¹³. U. P. Act X of 1945 S. 9 and sub. para 3.

¹⁴. C. P. Act II of 1932 s. 229 and sub. s. 7.

¹⁵. Rajasthan Municipalities Act, 1959, s. 82.

¹⁶. U. P. Act II of 1959 s. 176 & sub. II para 10 as amended by U. P. Act XIII of 1959 s. 10.

¹⁷. Bengal Act V of 1911, s. 71 & sub-para 9(2) & West Bengal Act XXXVI of 1955, s. 74.

¹⁸. C. P. Act XXXVI of 1936 s. 61 7 sub cl. 10.

¹⁹. Page 39 (para 89) of the Report.

²⁰. (1951), 2 P & C.R. 189.

I. Other matters to be considered/neglected in determining Compensation.

5.123. We have carefully considered the other provisions of Section 23 and 24 of the Land Acquisition Act and are of the view that clauses *Secondly* to *Sixthly* in Section 23(1) may be retained. This Section may be amended suitably in other respects in the light of our recommendations.

5.124. We further recommend that the provisions of Section 24 may be retained except in clause *Seventhly* wherein we have suggested minor changes entitling the land-holder to compensation for repairs in certain cases. A new clause, eighthly will have to be added in Section 24 for implementing our suggestions that increase in the market value of the land by reason of illegal use etc., should be excluded.

J. Compensation for Mines and Minerals.

5.125. Some persons from Gujarat whose lands have been acquired by the Oil and Natural Gas Commission for the purpose of oil exploration had represented to us that the farmers owning land wherein mineral oil including petroleum is found should be given special compensation or royalty on oil extracted, in addition to the compensation for the land admissible under the Act.

5.126. The land owner would be entitled to compensation for mines and minerals, on acquisition of his land, only when through some law or fiction accepted as law he could establish his ownership of the contents of the underground land.

5.127. The British concept was that the proprietary or actual ownership of the land always resided in the Sovereign. Early British administrators applied this theory in India. Sir Henry Maine said "all the soil belonged in absolute property to the Sovereign and all private property existed by his sufferance."⁹⁰

5.128. However, in 1793, the British Administration transferred in perpetuity the entire property in the soil in certain areas to the Zamindars. The Preamble to Regulation II of 1793 declares that the property in the soil was vested in the land-holders and the revenue payable to Government from each estate was fixed forever. This was done for effecting improvements in agriculture which must necessarily be followed by the increase of every article of produce. Government continued to be the owner of mines and minerals of other lands of which no such grant of the soil was made. The

right of the Government to mines and minerals was also reserved by express declarations in certain statutes such as the Bombay Revenue Code, 1879. Where therefore compensation is, claimed for mines and minerals such as oil in the lands of Gujarat, the question which arises for consideration is whether the owner of the land acquired has any right, title or interest in the mines and minerals beneath it.

5.129. Compensation is awarded for the land acquired under the Land Acquisition Act. The definition of the expression 'Land' is given in Section 3(a) of the said Act. Under Section 3(a), the expression 'Land' includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth; 'land' under this Act thus includes buildings, trees and standing crops. The definition as given in the Act is not exhaustive. The question as to the meaning of the expression 'land' fell to be determined by the Supreme Court in two recent cases which arose under the Coal Bearing Areas (The Acquisition and Development) Act, 1957. This Act was intended to cover land or rights in or over land belonging either to an individual or to a juristic person. In *Barapur Coal Co. Ltd., vs. Union of India*⁹¹ the Supreme Court while dealing with the provision for compensation for the land acquired under the said Act observed that the expression 'Land' includes all that lies beneath the surface or all that is 'locked up' in the land. In the subsequent case of the *State of West Bengal vs. Union of India*⁹² arising under the same Act, the Court pointed out that the land intended to be covered by the said Act may comprise not only surface rights but also mineral rights.

5.130. *Prima facie*, the owner of a surface of the land is entitled *ex jure* to everything beneath the land and in the absence of any reservation in the grant minerals necessarily pass with the rights to the surface.⁹³ In other words, a transfer of the right to the surface conveys right to the minerals underneath unless there is an express or implied reservation is the grant.⁹⁴

5.131. Where, therefore, there was no reservation of mineral rights in favour of the Government in the two Sanads granted to the Zamindar of Pargana Agori in Mirzapur District, it was held by our Supreme Court in a recent case⁹⁵ that the grant must be taken to be not only of the land but also of everything beneath or within the land.

5.132. It is clear from Regulation VIII of 1793 applicable to the Provinces of Bengal, Bihar and Orissa and Regulation I of 1795 applicable to the Benaras Province that the zamindars, the proprie-

⁹⁰. See Maine 'Village Communities' 7th Edn. 1931, p. 104

⁹¹. 1962 SCR 44 (65)

⁹². 1964(1) SCR 371 (389).

⁹³. Halsbury's laws of England, 3rd Edn. Vol. 26 p. 325.

⁹⁴. A contract, therefore, to sell or grant a lease of land will generally include mines, quarries, and minerals beneath or within it. *Mitchell v. Mosley*. 1914-1 Ch. 438(450).

⁹⁵. *Raja Anand v. State of U. P.* AIR 1967 SC 1081(1088),

tors of estates, were recognised to be the 'proprietors of the soil' and the permanent settlement of the zamindaris proceeded upon that basis. Such a view was also expressed by the Judicial Committee in *Ranjit Singh v. Kali Dasi Debi*⁴⁴

5.133. The right of the zamindars to the sub-soil minerals under their land were thus derived from their being proprietors of the soil and has been recognised in a number of cases between the zamindars and persons holding land under a tenure from them⁴⁵.

5.134. In permanently settled areas, the right to mines or minerals vested in the zamindars and landholders except in areas not included where the Government continued to exercise such rights. The State was not ordinarily the owner of minerals in permanently settled estates. However, in other parts of the country, where there was no Permanent Settlement, mines and minerals vested in the State. Right of the Government to mines and mineral products was expressly reserved in the statutes of certain provinces. For example, the following statutes declared expressly the rights of the Government to mines and minerals:—

1. The Punjab Land Revenue Act, XXXIII of 1871.
2. Ajmere Land and Revenue Regulations 11 of 1877.
3. The Bombay Revenue Code (Bombay Act V of 1879).
4. The C.P. Land Revenue Act XVIII of 1881.

Extracts of the relevant sections of these statutes are given in the Annexure.

5.135. It would be pertinent to note here that in 1885 a separate Act which was styled as the Land Acquisition (Mines) Act was passed with the object of making provision for the grant of compensation to the owners of mines situated under the land sought to be acquired by the Government, where such mines were not required by the Government but the owners were prevented from working them. This Act which enabled Government to acquire land without the acquisition of mines and minerals, in certain areas, proceeds on the footing that the mines and minerals belong to the owner of the soil. Section 3 of the Act provides that the mines and minerals lying under the land sought to be acquired shall not vest in the Government if it is stated in the declaration that they are not needed. In such a case, compensation is paid only for the surface land, and not for the mines and minerals which continue to vest in the land owner.

5.136. This Act applied in the first instance to the territories which immediately before the 1st November, 1956 were comprised in the States of Madras, Andhra Pradesh, West Bengal, Bihar and Orissa. It has already been pointed out above that

zamindars in permanently settled areas in the provinces of Bengal, Bihar, Orissa etc., were also the owners of the mines and minerals in the lands of which they were proprietors. The Mines Act was, however, not extended to other States where the right to mines and minerals vested in the Government. Section 2 of the Act saves the right of the Government to any mines or minerals except as expressly provided by this Act.

5.137. The Law Commission commenting on this Act remarked as under:—

The Laws enacted for the abolition of zamindaris Jagirs, major Inams and the like have vested in the respective State Governments the underground rights in the land. In the Ryotwari areas, the problem did not arise and could not arise as the right of the Government to the underground rights was never disputed. In view of this position, we would have recommended the repeal of the Act but for the fact that there may still be in existence some minor jagirs and Inams in which the proprietor has underground rights in the land. As it has not been possible for us to make an exhaustive inquiry into this matter, we think that the Act may be continued on the Statute Book for some more years.

5.138. With the acquisition of zamindari rights by the State Governments, the rights in the minerals are now vested in all the areas in the State Governments⁴⁶.

5.139. Where the mines and minerals are vested in ownership of the State Governments, it would not be necessary for Government to acquire the same when the land is acquired. In cases of this kind, no question of payment of compensation for the mines and minerals arises and the claim of the land-owners would not, therefore, be tenable. While the proprietary rights in the minerals may be vested in the State Governments, it is possible that the areas wherein minerals exist may be covered by mining leases held by private persons or prospecting licences which carry a right to a mining lease. It is only in cases of this type that compensation for the acquisition of the rights of prospecting licensees and mining lessees will have to be provided for under the law. In this context, reference may again be made to the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957. The validity of the Act was challenged *inter alia* on the ground that Section 13 of the Act, though it dealt with the payment of compensation for land, did not provide for compensation for mineral rights. The contention that the provisions made by Parliament for computing the amount of compensation for the land did not take into account the value of the minerals was in effect a challenge to the adequacy of the compensation, and the Court held that the concluding

⁴⁴-a. 44 Ind. App. 117, at p. 122 (AIR 1917 PC 8 at p. 10).

⁴⁵. Hari Narayan Singh v. Sriram Chakravarti (1910) 37 Ind. App. 136 (PC).

⁴⁶. See Statement of Objects and Reasons for the Coal Bearing Areas (Acquisition and Development) Bill, 1957,

words of Art. 31(2) of our Constitution preclude such a challenge being made. The contention of the petitioners that the minerals underlying the surface are a separate tenement and have to be separately compensated for was also negated by the Court¹¹.

5.140. With the abolition of Zamindaris and the vesting of mineral rights in the State Governments, the question of compensation for mines and minerals has practically ceased to be of any importance in our country. We do not, therefore, feel called upon to make any recommendations in this regard.

K. Compensation in Kind.

5.141 It is well settled that compensation may be paid in one lump sum of cash or by instalments, or in bonds, or in kind e.g. land or partly in two or more of these methods or allotment of other property.

5.142. The expression 'compensation' is not defined in the Constitution. Under the Land Acquisition Act, compensation is always paid in terms of money. But that is no reason for holding that compensation which is guaranteed by Art. 31(2) for compulsory acquisition must be paid in terms of money alone. As pointed out by the Supreme Court in a recent case¹², a law which provides for making satisfaction to an expropriated owner by allotment of other property may be deemed to be a law providing for compensation. In ordinary parlance, the expression 'compensation' means anything given to make things equivalent; a thing given to or to make amends for loss, recompense remuneration or pay; it need not therefore necessarily be in terms of money¹³.

5.143. While Section 31(1) of the Land Acquisition Act contemplates payment of compensation money to the persons interested, entitled thereto according to the award of the Collector, sub-section (3) of this section provides that the Collector may with the sanction of the appropriate Government instead of awarding money compensation in respect of any land make any arrangements with the person having limited interest in such land, either by the grant of other lands in exchange, remission of land revenue on other lands held under the same title or any such other way as may be equitable having regard to the interests of the parties concerned. It is also clear from sub-section (4) of Section 31 that the Collector can enter into any arrangement with any person interested in the land and competent to contract in respect thereof. While sub-section (3) concerns particularly limited owners, sub-section (4) deals with full owners who are competent to contract. There were no provisions corresponding to sub-sections (3) and (4) of section 31 in the earlier Act of 1870. In its Report dated 23rd March, 1893, the Select Committee had

stated that they had added a section giving formal powers to the Collector with the sanction of the Government to adjust compensation by an exchange of land, a method of settlement which was found in some provinces useful and convenient to all parties. Recently, provisions have been made in various Town Planning Acts and other Acts for allotment of land after development to the same persons whose lands had earlier been acquired in order that those persons are not rendered homeless, and they are provided with dwelling houses. This method of settlement has been found useful and convenient to all parties. The Law Commission has recommended in the draft Bill prepared by them that specific provisions in sub-section 4 may be made by virtue of which the acquiring authority may enter into an agreement for the grant of other lands in exchange of the land acquired. As has been explained above, this is permissible under the Constitution. We recommend that specific provisions in the sub-section (4) of section 31 for giving land as compensation for land acquired may be made. We are of the view that the acquiring authority should, wherever it is practicable, make available land for land for the small holders so as not to disturb the subsistence equilibrium of the people affected by land acquisition. Our recommendation is, however, subject to this rider that this option is to be exercised only by the land owner or the person interested in land and not by the acquiring authority—Cash should not be substituted by alternate land unless the land owner agrees and that too in writing.

L. Interest on Compensation.

5.144. Section 28 of the Land Acquisition Act lays down that the Court may direct that the Collector shall pay interest on the excess amount which he should have awarded as compensation at the rate of 6 per cent per annum from the date on which he took possession of the land up to the date of payment of such excess amount. Section 34 of the Act provides that the Collector shall pay interest at the rate of 6 per cent per annum on the amount of compensation which he has not paid or deposited on or before taking possession of the land. Such payment is to be made from the date of taking possession until it has been paid or deposited.

5.145. In most of the State Amendment Acts, the State Governments have retained the provision of payment of interest at the rate of 6 per cent as laid down in the Act. A few State Governments, like Mysore have fixed the rate of interest at 5 per cent per annum while Gujarat has fixed at 4½ per cent per annum. In the Madhya Pradesh Amendment Act, the interest is payable at the rate which shall not be less than 3 per cent per annum and more than 6 per cent per annum.

¹¹. *Burrakur Coal Co. Ltd. v. Union of India* 1962, SCR 44.

¹². *State of Gujarat v. Sri Shanti Lal*. In this case, the Supreme Court further observed that the phraseology of the constitutional provision also indicates that compensation need not necessarily be in terms of money, because it expressly provides that the law may specify the principles on which, and the manner in which, compensation is to be determined and given. If it were to be in terms of money alone, the expression 'paid' would have been more appropriate,

5.146. It will be relevant to consider the rate of interest provided by other countries like U.S.A., U.K. and Australia in their laws relating to land acquisition.

5.147. In the U.S.A., the payment of interest is considered an allowance either as damages for the detention of the compensation or as payment necessary to produce a full equivalent of the value of an award paid contemporaneously with the taking". In most of the jurisdictions, it is the view that the interest which may be recovered as part of the damages or compensation to which one is entitled is a matter of strict constitutional right; whereas in other jurisdictions it is considered to be the discretion of the Jury".

5.148. The Federal Declaration of Taking Act provides for payment of interest from the date of taking at the rate of 6 per cent on the amount that was not deposited in the court. In the law of the States, the owner of property taken is entitled to a reasonable rate of interest. The usual or legal rate of interest in the locality where the acquired property is located is considered reasonable or fair. Various specific rates have been allowed, among others, 3 per cent, 4 per cent, and 6 per cent".

5.149. In U.K., the rate of interest in any compensation in respect of the compulsory acquisition of an interest in any land on which entry has been made before the payment of the compensation is (instead of being the rate of five per cent, specified under Section 85 of the Lands Clauses Consolidation Act, 1845) such rate as may from time to time be prescribed by regulations made by the Treasury".

5.150. In Australia, compensation bears interest at the rate of three per centum per annum from the date of the acquisition of land, or the time when the right to compensation arose, until payment thereof is made to the claimant or until the amount thereof has been deposited in the Treasury.

5.151. However, where the compensation awarded in action for compensation, or determined in a judicial proceedings, is not more than the amount offered by the Minister in satisfaction of the claim for compensation, the compensation bears interest only to the date when the offer of the Minister is communicated to the claimant".

5.152. It was suggested to us that the rate of interest prescribed in the Land Acquisition Act is low and that it should be raised to 9 per cent per annum as it is at this rate that the commercial banks advance loans to the private individuals. On the other hand, the Law Commission which had reviewed the Land Acquisition Act had recommended that the rate of interest should be 5 per cent per annum instead of 6 per cent as laid down in the Act.

5.153. We have considered the provisions of the law in other countries as well as in the State Acts and are of the view that having regard to the normal bank rate at which loans are available, the rate of interest should not be less than 6 per cent per annum. The existing provisions of the law fixing the rate at 6 per cent per annum should therefore be retained.

⁹⁰. 27 American Jur. 2d Eminent Domain, S. 297.

⁹¹. *Ibid.*, S. 298.

⁹². *Ibid.*, S. 302.

⁹³. Section 32(1) of Land Compensation Act, 1961.

⁹⁴. Section 40 of the Australian Land Acquisition Act, 1906-34.

ANNEXURE

(Ref. para 5.83)

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Council Acts, 1891 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14)

Market-value & Reinstatement Amendment of Land Acquisition Act, 1870

(1st February)

The Hon'ble Dr. Rambehary Ghose moved that in the first clause of Section 23 of the Bill, as amended, for the words "market-value" the word "value" be substituted. He said:

"I would ask permission to slightly modify the language of the amendment, because I find that the words 'market-value' occur in more places than one in section 23, and the amendment ought therefore to run as follows:—

That in section 23 of the Bill, as amended, for the words 'market-value', wherever they occur, the word 'value' be substituted.

"The ground on which I ask that the word 'value' should be substituted for 'market-value' is that the section as it now stands assumes that everything which may be acquired under the Statute for public purposes has got an ascertainable definite market-value; but there are things of which you cannot say that they have got any market-value; a church, for instance or a temple. I am not putting merely a hypothetical case, for an instance actually occurred recently in the Presidency of Madras in which the question arose as to whether or not the owner of two very ancient temples was entitled to any compensation under section 24 of the present Act.

"The case came before the High Court, and a Division Bench of the High Court decided that the owner was not entitled to anything because, as Mr. Justice Shephard said, the temples did not possess any market-value. That decision was confirmed on appeal to the Privy Council, and their Lordships in delivering judgment said:—

"The case was heard by Mr. Justice Wilkinson and Mr. Justice Shephard. As regards the temples and carvings, they both agreed with the District Judges that they have no market-value. It is highly improbable that they should have any. No evidence was offered to show that there is any; and Mr. Justice Wilkinson adds that the claimant's counsel did not assist the Court by suggesting any price which might be offered as a fancy price. Their Lordships find themselves in a like position with the High Court, and all they can do is to express agreement with the Courts below on this point."—Law Reports, Indian Appeals, Vol. 20, p. 67.

"I suppose no evidence could have been offered to show that there is any market-value for temples, either in Madras or in any other part of India. The result, therefore, was that the owner of the temples was expropriated, and it was held that he was not entitled to any compensation. In the English Land Clauses Act the term used is not 'market-value' or 'market-price', but 'value', and the law on this point in England is summed up in a well known text-book on the subject. At page 114 of Cripps on Compensation it is said:—

"The value to the owner can be ascertained either by a valuation of the lands taken with the addi-

tion of compensation for incidental injury, or by what is known as the reinstatement principle. In either case, the test of compensation is value to the owner. The difference arises in the method to be adopted in ascertaining this value. In a majority of cases, the value to the owner may be fixed by the value of the property taken, with the addition of compensation for incidental injury; but in some cases the value so ascertained would not be the value to the owner, and then the principle of reinstatement should be applied. This principle is that the owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or lands taken by premises or lands which would be to him of the same value. It is not possible to give an exhaustive catalogue of all cases to which the principle of reinstatement is applicable. But we may instance churches, hospitals, houses of an exceptional character, and business premises in which the business can only be carried on under special conditions, or by means of special licenses."

"In order to obviate any possible misconception I propose to add the following proviso in the shape of an explanation to the amendment in the paper:—

"Value" shall mean market-value when the property has a market-value, but in cases where the property has no market-value the value shall be deemed to be such a sum as will enable the owner to replace the premises or lands taken by premises or lands which would be to him of the same value."

"The Madras case illustrates the necessity for amending the language of the law as it now stands. A somewhat similar difficulty would arise in dealing with mansion houses in the country under the Act. There is no market for such houses, however, expensive and costly in the interior of the country. I submit, therefore, that there can be no harm in adopting the word 'value', qualified as it is by the explanation which I am going to add to it, for the words 'market-value' which are now to be found in the Bill."

The Hon'ble Sir Alexander Miller said: "I should not object to the amendment on the paper at all myself. I think that, wherever an article is marketable, the market-value is the proper test of its value. But it is true that there may be cases—in fact, there has been one in which the article had a very considerable value in which was decided that it had no market-value. No particular harm was done in that case, because the temple concerned was merely taken for the purpose of preserving it, and it was just as valuable to the people after it was taken as it was before. But, suppose it has been taken for the purposes of a railway, it would, I think, be rather a hard thing to say that it had no value, and therefore that it was not to be paid for because it had no market-value and was not a source of income to the owner, and, therefore, quite irrespective of the contention of the Hon'ble Member, I think the word 'value' is a better word to use in this Bill than the words 'Market-value'."

"I should object, however, to the proposed explanation, because I see great objections to any attempt to define 'value' or 'Market-value'."

The Hon'ble Mr. Lee-Warner said: "I think that although this amendment has the support of the Hon'ble Member in charge of the Bill, yet it is one of such widespread importance, and affects so much the whole principle of this Bill, that it is rather dangerous at the last moment to touch this very debatable phrase 'market-value', merely because in a particular instance the application of market-value to the acquisition of a particular temple proved difficult. If the Council have read the various discussions and reports of the Select Committee, it will be remembered that on no subject has there been greater difference of opinion than on this of market-value. It was at first attempted to define it, and then, in deference to strong representations for and against that course either side, the phrase 'market-value' was not defined. We have got the word in the present Act as it stands. During the many occasions that Act has been applied, certain ideas and rulings of the Courts have collected round the expression 'market-value'. At any rate it is a more precise explanation of what is required than the vaguer word 'value'. I am not sure that, if we had no other property to take up for a public purpose except temples, it would be necessary to change the phrase. I remember a particular case in which a temple was required not for preservation but for submergence in a large reservoir. The villagers declined to sell it, not because it was of no value, but because it was impossible for them to assess the value, and they would be no parties to the sale of so sacred an edifice. It devolved upon me to settle the case, and I simply ascertained by inquiry what the cost of erecting the temple had been. I also was able to assess with perfect ease the value of the land on which the temple stood, and, having addressed the Government on the subject, I was permitted to place in deposit at the treasury, to be paid on the call of the village-headmen, the sum of money which I had awarded. In due course of time they purchased another site, the temple was removed and a new temple set up where it was required. The case, however, is so very rare that it seems to me that it would be dangerous at this stage to go and uproot a phrase which has been deliberately adopted throughout the Bill, and to unsettle the whole question of 'value' and 'market-value' which it was hoped was at last laid at rest by the manner in which this Bill was drawn up. For this reason I should be very sorry to support the alteration of a phrase in reference to a matter in which there has been so much discussion."

The Hon'ble Sir Griffith Evans said that, in the case referred to by the Hon'ble Mr. Lee-Warner, he had not committed the injustice of taking the temple for nothing, as he might have done, but had made a representation to the Local Government and settled the question of compensation to the owner. It was not, however, everybody who would be so tender-hearted. This went to show there was need of amendment in the law. He, however, quite agreed with the Hon'ble Member that it would be unsafe to alter important words with regard to which there had been so much discussion, and so many decisions, at this late stage. If new words were adopted, he feared that there might be great deal of litigation over again. He would not be inclined therefore at this stage of the Bill to alter the words, unless the proviso which his hon'ble friend Dr. Rashbehary Ghose had suggested, limiting the change to cases where there was no market-value were adopted. If such an explanation were adopted, it would remove any objection of the kind the Hon'ble Mr. Lee-Warner had put forward. It would leave the law exactly as it was with regard to every case save the exceptional cases where there was no market-value.

The Hon'ble Sir Antony MacDonnell said: "I agree with my hon'ble friend Sir Griffith Evans that it is very undesirable at this stage to introduce into the Bill so far-reaching a change as that suggested. If the Council will refer to paragraph 14 of the Further Report of the first Select Committee, they will find it there, stated that—

"we have again considered the question of a definition of the term 'market-value', but we adhere to

the opinion of our Preliminary Report that it is preferable to leave the term undefined. No material difficulty has arisen in the interpretation of it; the decisions of the several High Courts are at one in giving it the reasonable meaning of the price a willing buyer would give to a willing seller; but the introduction of a specific definition would sow the field for a fresh harvest of decisions; and no definition could lay down for universal guidance in the widely divergent conditions of India any further rule by which that price should be ascertained."

'I think it would be unwise to introduce the change now proposed at this stage. My disposition is to agree with the substance of the Hon'ble Dr. Rashbehary Ghose's proviso, but I cannot say how far that proviso would meet the case, and at this stage of the Bill I think it would be difficult to speak with certainty on the subject'

The Hon'ble Sir Charles Pritchard said: "The question of the phrasing of this sub-section of the Bill received very careful attention at the hands of the Select Committee which considered the Bill on two separate occasions last year. That Committee, of which my hon'ble friends Sir Alexander Miller and Dr. Rashbehary Ghose, as well as myself, were members reported unanimously in favour of the retention of the words 'market-value', as used in the existing Act, for reasons that are stated in paragraph 7 of its original report dated the 1st February, 1893, and are more fully explained in paragraph 14 of its second report dated the 22nd March, 1893. The new Select Committee which has recently again considered the Bill has also reported in favour of their retention. The Hon'ble Mover of the amendment does not content that, even in the extreme case which he has cited, the use of those words has led to any material injustice or inconvenience, the interpretation to be placed upon them has now been settled, after much litigation, by decisions of the Courts, and I would depreciate any alteration of them which would only sow the field for a harvest of further litigation and fresh decisions."

His Honour the Lieutenant-Governor said: "I quite agree with what has fallen from the two Hon'ble Members who have last spoken and also from my hon'ble friend Sir Griffith Evans on this subject. I think it would be extremely inadvisable to alter the law so suddenly and to make an alteration which even the Hon'ble Mover of the amendment had not foreseen the full effect of when he put his amendment on the paper, inasmuch as he has been obliged to suggest a further addition to it which I have only heard now for the first time. It would, in my opinion, be a very serious matter for this Council to accept an important and serious change in the law in such a light-hearted way, and if the amendment should be carried I should feel it my duty to move that the consideration of the Bill should be postponed and that it should not be passed into law until the matter was further considered."

The Hon'ble Dr. Rashbehary Ghose said: It is said that it is impossible to foresee the full force and meaning of the proposed amendment; but the word 'value' is, I submit, not new in its application to land required for public purposes. It is to be found in the English Land Clauses Act, from which our own Act has been copied with variations which have not always been improvements. The word 'value' has received a definite meaning certainly of a less flexible character in England than the words in the Indian Act, and the passage which I read to Hon'ble Members from Cripps on Compensation shows what construction has been put on that word by English Judges in the English Courts. The principle adopted by the English Courts is the very same principle which the Hon'ble Mr. Lee-Warner followed when he acquired a Hindu temple for public purposes. It is known as the principle of reinstatement. It has been said that it would be dangerous to accept the amendment now proposed at this moment. It is true the

particular case in the reports was not present to my mind when the Select Committee sat on the last occasion; but I venture to think that we should not be doing our duty if we left a question like this unsettled;—unsettled perhaps is not the proper expression to use. We should leave all persons who might happen to have property of this valuable character liable to be expropriated, no doubt for the most benevolent purposes, without any compensation at all; because the law as laid down by the Privy Council must be binding on every Court in this country from the highest to the lowest. We shall have to wait—I do not know for how many years—for an amendment of the law, and, even if this amendment could be carried only at the cost of another reference to the Select Committee, I do not think that ought to be a sufficient ground for the rejection of my proposal. I propose, therefore, as there seems to be less objection to the amendment with the proviso, to take the amendment as a whole, and to add what I have just read as a rider to the amendment which stands in my name. It is perfectly true—and I am sorry to admit it—that I was not able to give notice of this amendment until yesterday afternoon; but the amendment I propose does not involve questions of a novel or of a very abstruse character, and I submit, for the reasons already stated, that it is one

which ought to be adopted, as great injustice and hardship might otherwise arise in the case of property which has either no market-value, or the market-value of which cannot be ascertained in any of the ordinary modes now followed by our Courts."

His Excellency the President said: "I should like to say that, as I understand the Rules of Business, even if this proviso were approved, it should be put as a separate amendment, and not taken as part of the amendment before the Council. The amendment must be put, I take it, in the form in which it appears on the paper, and if any Member of Council takes objection to the proviso it cannot be put."

The Hon'ble SIR ANTONY MACDONNELL said that he did not like the proviso and would vote for the Bill as it stood, but, if the Hon'ble Member wished to have the proviso, he might perhaps, with the permission of the Council, suggest another form of amendment which might meet the case.

His Excellency The President thought that the proper course would be to put the amendment as it stood upon the notice-paper.

The amendment was put and negatived.



ANNEXURE

(Ref. para 5.134)

1. The Punjab Land Revenue Act (XXXIII of 1871)

S.29. "Mines of metal or coal and gold washings shall in every case be deemed to be property of Government; but if Government works or causes to be worked any such mine, compensation for damage to the surface of the soil shall be made to such surface. Such compensation may be obtained and shall be ascertained and awarded in accordance with the provisions of Act X of 1870". (Now Act 1 of 1894).

S.41. "All mines of metal and coal, and all earth, oil and gold washings shall be deemed to be the property of the Government and the Government shall have all powers necessary for the proper enjoyment of its rights thereto."

2. The Ajmer Land and Revenue Regulations (XI of 1877)

S.3. "Except in case of land in respect of which *istimrari sanads* have been granted by the Chief Commissioner with the previous sanction of the Governor-General in Council, the Government shall be presumed, until the contrary is proved, to be the sole owner of all mines, opened and unopened of metal, coal and other valuable minerals, with full liberty to search for and work the same".

3. The Bombay Land Revenue Code (Bombay Act V of 1879)

S.69. "The right of Government to mines and mineral products in unalienated land is and is hereby declared to be expressly reserved:

Provided that nothing in this section shall be deemed to affect any subsisting right of any occupant of such land in respect of such mines or mineral products."

Rule 14.—The reservation must be in every alienation thus—

"This grant is made subject to the reservation of the right of State to all mines and mineral products, of full liberty of access for the purpose of working and searching for the same with all reasonable convenience."

4. The Central Provinces Land Revenue Act (XVIII of 1881)

S.151. Unless it is otherwise expressly provided in the records of a settlement or by the terms of the grant made by Government, the right to all mines, minerals, coal and quarries shall be deemed to belong to Government, and the Government shall have all powers necessary for the enjoyment of such rights, provided that whenever in the exercise by the Government of the rights therein referred to over any land the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the Government shall pay to such persons compensation for such infringement, and the amount of such compensation shall be determined as nearly as may be in accordance with the provisions of land Acquisition Act, 1870." (now Act 1 of 1894).



ANNEXURE

(Ref. para 5.22)

The Land Compensation Act, 1961, Ch. 33, Part II

General Provisions for Determining Compensation Rules for assessing compensation

5. Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules:

- (1) No allowance shall be made on account of the acquisition being compulsory;
- (2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise;
- (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any authority possessing compulsory purchase powers;
- (4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any Court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account;
- (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Land Tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;
- (6) The provisions of rule (2) shall not affect the assessment of compensation for disturbance of any other matter not directly based on the value of land;

and the following provisions of this Part of this Act shall have effect with respect to the assessment.

Disregard of actual or prospective development in certain cases

6. (1) Subject to section eight of this Act, no account shall be taken of any increase or diminution in the value of the relevant interest which, in the circumstances described in any of the paragraphs in the first column of Part I of the First Schedule to this Act, is attributable to the carrying out or the prospect of so much of the development mentioned in relation thereto in the second column of that Part as would not have been likely to be carried out if—

- (a) (where the acquisition is for purposes involving development of any of the land authorised to be acquired) the acquiring authority had not acquired and did not propose to acquire any of that land; and
- (b) (where the circumstances are those described in one or more of paragraphs 2 to 4 in the said first column) the area or areas referred to in that paragraph or those paragraphs had not been defined or designated as therein mentioned.

(2) The provisions of Part II of the First Schedule to this Act shall have effect with regard to paragraph 9 of Part I of that Schedule.

(3) In this section and in the First Schedule to this Act—

"the land authorised to be acquired"—

(a) in relation to a compulsory acquisition authorised by a compulsory purchase order or a special enactment, means the aggregate of the land comprised in that authorisation, and

(b) in relation to a compulsory acquisition not so authorised but affected under powers exercisable by virtue of any enactment for defence purposes, means the aggregate of the land comprised in the notice to treat and of any land contiguous or adjacent thereto which is comprised in any other notice to treat served under the like powers not more than one month before and not more than one month after the date of service of that notice;

"defence purposes" has the same meaning as in the Land Powers (Defence) Act, 1958;

and any reference to development of any land shall be construed as including a reference to the clearing of that land.

Effect of certain actual or prospective development of adjacent land in same ownership

7. (1) Subject to section eight of this Act, where, on the date of service of the notice to treat, the person entitled to the relevant interest is also entitled in the same capacity to an interest in other land contiguous or adjacent to the relevant land, there shall be deducted from the amount of the compensation which would be payable apart from this section the amount (if any) of such an increase in the value of the interest in that other land as is mentioned in sub-section (2) of this section.

(2) The said increase is such as, in the circumstances described in any of the paragraphs in the first column of Part I of the First Schedule to this Act, is attributable to the carrying out or the prospect of so much of the relevant development as would not have been likely to be carried out if the conditions mentioned in paragraphs (a) and (b) of sub-section (1) of section six of this Act had been satisfied; and the relevant development for the purposes of this sub-section is, in relation to the circumstances described in any of the said paragraphs, that mentioned in relation thereto in the second column of the said Part I, but modified, as respects the prospect of any development, by the omission of the words "other than the relevant land", wherever they occur.

Subsequent acquisition of adjacent land and the acquisition governed by enactment corresponding to s. 7

8. (1) Where, for the purpose of assessing compensation in respect of a compulsory acquisition of an interest in land, an increase in the value of an interest in other land has, in any of the circumstances mentioned in the first column of Part I of the First Schedule to this Act, been taken into account by virtue of section seven of this Act or any corresponding enactment then, in connection with any subsequent acquisition to which this sub-section applies, that increase

shall not be left out of account by virtue of section seven of this Act or any corresponding enactment, in so far as it was taken into account in connection with the previous acquisition.

(2) Where, in connection with the compulsory acquisition of an interest in land, a diminution in the value of an interest in other land has, in any of the circumstances mentioned in the first column of the said Part I, been taken into account in assessing compensation for injurious affection, then, in connection with any subsequent acquisition to which this sub-section applies, that diminution shall not be left out of account by virtue of section six of this Act in so far as it was taken into account in connection with the previous acquisition.

(3) Sub-sections (1) and (2) of this section apply to any subsequent acquisition where either—

(a) the interest acquired by the subsequent acquisition is the same as the interest previously taken into account (whether the acquisition extends to the whole of the land in which that interest previously subsisted or only to part of that land), or

(b) the person entitled to the interest acquired is, or derives title to that interest from, the person who at the time of the previous acquisition was entitled to the interest previously taken into account;

and in this sub-section any reference, to the interest previously taken into account is a reference to the interest the increased or diminished value whereof was taken into account as mentioned in sub-section (1) or sub-section (2) of this section.

(4) Where, in connection with a sale of an interest in land by agreement, the circumstances were such that, if it had been a compulsory acquisition, an increase or diminution of value would have fallen to be taken into account as mentioned in sub-section (1) or sub-section (2) of this section, the preceding provisions of this section shall apply, with the necessary modifications, as if that sale had been a compulsory acquisition and that increase or diminution of value had been taken into account accordingly.

(5) Section seven of this Act shall not apply to any compulsory acquisition in respect of which the compensation payable is subject to the provisions of any

corresponding enactment, nor to any compulsory acquisition in respect of which the compensation payable is subject to the provisions of any local enactment which provides (in whatever terms) that, in assessing compensation in respect of a compulsory acquisition thereunder, account shall be taken of any increase in the value of an interest in contiguous or adjacent land which is attributable to any of the works authorised by that enactment.

(6) Where any such local enactment as is mentioned in sub-section (5) of this section includes a provision restricting the assessment of the increase in value thereunder by reference to existing use (that is to say, by providing, in whatever terms, that the increase in value shall be assessed on the assumption that planning permission in respect of the contiguous or adjacent land in question would be granted for development of any class specified in the Third Schedule to the Town and Country Planning Act, 1947, but would not be granted for any other development thereof), the enactment shall have effect as if it did not include that provision.

(7) References in this section to a corresponding enactment are references to any of the following, that is to say,—

(a) section thirteen of the Light Railways Act, 1896;

(b) sub-paragraph (C) of paragraph (2) of the Schedule to the Development and Road Improvement Funds Act, 1909;

(c) sub-section (6) of section two hundred and twenty-two of the Highways Act, 1959; and

(d) paragraph 4 of Part III of the Third Schedule to the Housing Act, 1957;

and, in sub-section (1), include references to any such local enactment as is mentioned in sub-section (5).

Disregard of depreciation due to prospect of acquisition by authority possessing compulsory purchase powers

9. No account shall be taken of any depreciation of the value of the relevant interest which is attributable to the fact that (whether by way of designation, allocation or other particulars contained in the current development plan, or by any other means) an indication has been given that the relevant land is, or is likely, to be acquired by an authority possessing compulsory purchase powers.

FIRST SCHEDULE

Actual or prospective development relevant for purposes of Sections 6 & 7

PART I

Description of Development

Case

Development

- | | |
|---|--|
| 1. Where the acquisition is for purposes involving development of any of the land authorised to be acquired. | Development of any of the land authorised to be acquired other than the relevant land, being development for any of the purposes for which any part of the first-mentioned land (including any part of the relevant land) is to be acquired. |
| 2. Where any of the relevant land forms part of an area defined in the current development plan as an area of comprehensive development. | Development of any land in that area, other than the relevant land, in the course of the development or redevelopment of the area in accordance with the plan. |
| 3. Where on the date of service of the notice to treat any of the relevant land forms part of an area designated as the site of a new town by an order under the New Towns Act, 1946. | Development of any land in that area, other than the relevant land, in the course of the development of that area as a development of that area as a new town. |
| 4. Where any of the relevant land forms part of an area defined in the current development plan as an area of town development. | Development of any land in that area, other than the relevant land in the course of town development within the meaning of the Town Development Act 1952. |

CHAPTER 6

FORUM AND PROCEDURE FOR DETERMINING COMPENSATION



INDEX

PARAS. NO.

1. TRIBUNALS—

(a) Lands Tribunal in U.K.	6.3 to 6.18.
(b) Tribunals under the Central Acts	6.19 to 6.22.
(c) Tribunals under the State Acts	6.23 to 6.28.
2. Arbitrators	6.29.
3. Courts and Assessors in India	6.30 to 6.34.
4. Collector and the Court	6.35 to 6.40.
5. Courts	6.41 to 6.68.
6. Proceedings by the Collector before making reference to the court	6.69 to 6.72.
7. Procedure to be followed by the Court	6.73 to 6.82.
8. Appeals in proceedings under the Land Acquisition Act	6.83 to 6.93.
9. Forum for determination of the existence of public purpose	6.94.
10. Extracts of the relevant provisions from the Draft Bill of the Law Commission	Annexure.



Forum and Procedure for Determining Compensation

The forum for determining the compensation and the procedure adopted by the assessing authority are important factors in giving a fair deal to land-owners. We were conscious of this aspect, and in the Questionnaire which we had issued, we had elicited suggestions *inter alia* on the question of procedure for determining the compensation.¹ We have received suggestions from individuals, organisations and the State Governments on this issue, both in response to our questionnaire, and in the evidence recorded at various places. State Governments except those of Gujarat and Orissa have advocated the retention of the existing provisions of the law which envisage the determination of the amount of compensation first by the Collector, and then, by the court on a reference. The members of the public have, however, stressed the necessity of adjudication by an independent tribunal/court with or without the association of the assessors representing both the Government and the public. An examination of the system of determination of compensation by various agencies would be helpful to us in making our recommendations on the question of forum and procedure. We, therefore, propose to discuss briefly the composition and functions of various agencies that have been prescribed under the law in force in the U.S.A., Australia, U.K. and India.

6.2. Broadly speaking, the agencies for determining compensation for the land acquired by the State can be classified as under :—

- A. Tribunals.
- B. Arbitrators.
- C. Court & Assessors.
- D. Collector and the Court.
- E. Courts.

A. Tribunals

(a) Lands Tribunal in U.K.

6.3. Tribunals are not ordinary courts, but neither are they appendages of Government departments. A notable addition to the machinery of Administration of Justice is the Lands Tribunal in the United Kingdom. This Administrative Tribunal was set up by the Lands Tribunal Act, 1949, which came into

force² on 1st January, 1950. The general purpose of the Act was well stated in its long title :

“An act to establish new tribunals to determine in place of official arbitrators and others certain questions relating to compensation for the compulsory acquisition of land and other matters.....”.

Thus the tribunal was not constituted for the purpose of dealing with a completely novel type of business, but was to be a new body exercising old functions.

6.4. Under the Acquisition of Land (Assessment of Compensation) Act, 1919, where land was acquired compulsorily by any Government department or local or public authority, questions of disputed compensation were determined by a panel of official Arbitrators set up for that purpose.

6.5. A difficulty arose, however, from the fact that the arbitrators were qualified only as surveyors and valuers. They lacked legal knowledge, and were unable to secure 'close coordination and consistency of decision with each other.' In matters of valuation and compensation knotty legal questions often arose and hence the official arbitrators were at a disadvantage.

6.6. As from 1st January, 1950, the jurisdiction of the Official Arbitrators was transferred to the Lands Tribunal appointed under the Lands Tribunal Act, 1949, and now under the Land Compensation Act, 1961, this body determines any question of disputed compensation in any case where land is authorised to be acquired compulsorily.

6.7. In moving the second reading in the House of Commons, Sir Hartley Shawcross, the Attorney-General, said the object of the Lands Tribunal Bill was to strengthen and codify the statutory arrangements for settling disputes in connection with the valuation of land and to ensure that in all cases where some form of valuation is required by statute, there should be 'a single and consistent jurisdiction combining legal and technical valuation experience.'³

6.8. The Lands Tribunal is appointed by the Lord Chancellor and consists of a President and such number of other members as the Lord Chancellor may determine.⁴ The appointments are for terms determined by the Lord Chancellor with the prior

¹. See questionnaire B-9.

². An interesting personal account of the working of the tribunal is given by the President, Sir William Fitzgerald in his Article 'the Lands Tribunal' (1955) II BJAL—47.

³. B.P.P. 462 House of Commons Debates, 5th Series Cols. 41-62.

⁴. Lands Tribunal Act, 1949 (12, 13 and 14 Geo 6 C. 42) s. 2(1).

approval of the Treasury; and members are eligible for reappointment.⁶ The office of any member may be terminated, however, if, in the opinion of the Lord Chancellor, a member becomes unfit to continue in office or incapable of performing his duties.⁷

6.9. The President must be a person who has held judicial office or a barrister-at-law of at least seven years' standing. Such number of the other members as the Lord Chancellor may determine are to be barrister-at-law or solicitors of the like standing and the remaining members must be persons having experience in the valuation of land appointed after consultation with the President of the Royal Institution of Chartered Surveyors.⁸

6.10. The jurisdiction of the Lands Tribunal may be exercised by any one or more of its members except when there is statutory provision to the contrary.⁹ The President may select a member or members to deal with a particular case or class or group of cases or he may select for a class or group of cases members amongst whom a member or members to deal with any particular case are to be selected, and, in this latter case the selection for a particular case will be made by the President or by the member appointed to be chairman, if the President so directs.¹⁰ The President may, however, substitute another member for any other previously selected or vary the members selected for any group or class.¹¹

6.11. The following matters arising out of the proceedings for the compulsory acquisition of land may be referred to and determined by the Lands Tribunal:

- (i) Any question of disputed compensation where land is compulsorily acquired¹² (including compensation for severance and injurious affection where part only of land is taken);
- (ii) Any question of apportionment of rent where part only of land subject to a lease is acquired;¹³
- (iii) Any dispute as to the compensation payable by an acquiring authority for loss or expense

suffered by an owner in consequence of a notice to treat having been served and subsequently withdrawn;¹⁴

- (iv) Any question of disputed compensation for injurious affection to land no part of which is taken;¹⁵

- (v) Any question of apportionment of rent charge when part only of land is taken.

Section 1 of the Lands Tribunal Act, 1949, also gives the Tribunal jurisdiction in a number of other types of dispute.

6.12. Proceedings are instituted by either claimant or acquiring body sending a notice of reference to the Registrar of the Lands Tribunal in the manner prescribed in Rule 16 of Part IV of the Lands Tribunal Rules, 1963, made under Section 3(6) of the Lands Tribunal Act, 1949.

6.13. The Tribunal sits in public and hears only one expert witness on either side. However, it may hear one additional expert witness on either side for valuing the minerals or any damage suffered by reason of the disturbance in cases where compensation is claimed for minerals or disturbances. A member of the Tribunal dealing with the proceedings may enter on the land in question and inspect it. On the application of the parties the Tribunal must specify the amount awarded in respect of any particular matter in the award.¹⁶

6.14. In proceedings before the Tribunal the claimant is entitled to be heard first.¹⁷ Parties may be heard in person or be represented by counsel or solicitors; but a party may not be represented by a lay person except by leave of the Tribunal (or of the President or Registrar in the case of an interlocutory application).¹⁸ The parties may be called upon to furnish documents or other information which the Tribunal may require,¹⁹ and in general the details of procedure will be governed by the rules contained in Part VII of the Lands Tribunal Rules, 1963, so far as applicable to claims for compensation in respect of lands taken or injuriously affected.

⁶. *Ibid*, S. 2 (5).

⁷. *Ibid*, S. 2(4).

⁸. *Ibid*, S. 2(2).

⁹. *Ibid*, S. 3(1).

¹⁰. *Ibid*, S. 3(2). This sub-section applies to the selection of a member of the Tribunal for the purpose of *Ibid*, s. 1(6), as if the cases were one to be dealt with by the tribunal.

¹¹. Lands Tribunal Rules, 1963, s. 56.

¹². Land Compensation Act, 1961, s. 1 and Compulsory Purchase Act, 1965, s. 19(2).

¹³. *Ibid*, s. 31(4).

¹⁴. Compulsory Purchase Act, 1965, s. 10(1)—or Lands Tribunal Act, 1949, s. 1(2) (b) in cases when L. C. Act 1845 still applies.

¹⁵. *Ibid* s. 18(2)—or L. T. Act, 1949, s. 1(2) (c).

¹⁶. Land Compensation Act, 1961, s. 2.

¹⁷. L. T. Rules, 1963, Rule 35.

¹⁸. *Ibid*, Rule 40.

¹⁹. *Ibid*, Rule 44 and 45.

6.15. Attendance of witnesses and production of documents may be compelled by subpoena, and the Tribunal has power to administer the oath to the parties and their witnesses.¹⁹

6.16. The decision of the Tribunal must be made in writing, together with a statement of the reasons for decision; and copies of the decision must be sent by the Registrar to every party who has appeared before the Tribunal.²⁰ On the application of either party, the Tribunal must specify the amount awarded in respect of any particular matter.²¹

6.17. The decision of the Tribunal is final, save that an appeal by means of a case stated can be taken to the Court of Appeal. This limits the appeal to points of law.

6.18. It is significant to note that the Lands Tribunal Act, 1949, does not legally affect the codes of compensation and valuation which have been evolved under various statutes and which would normally be followed in any case. Indeed, the statute expressly provides that the transfer of any jurisdiction to the Lands Tribunal shall not affect the principles on which a question is to be determined or the persons on whom the determination is binding.²² The Attorney General of the U.K. had assured the House of Commons that the measure only concerns who shall make the valuation and not the principles on which it shall be made.

6.19. In India some of the Central²³ and State²⁴ Acts provide for the constitution of tribunals for the purpose of determining compensation, appointment thereof, and other ancillary matters. The salient features of two of such tribunals—one under the Central Act and the other under the State Act—are given below.

(b) Tribunal under the Central Act

The Coal Bearing Areas (Acquisition and Development Act, 1957).

6.20. When there is no agreement on the amount of compensation to be paid the Central Government has to constitute an *ad hoc* Tribunal²⁵. The

Tribunal is empowered to make an award determining the amount of compensation which it considers to be just and apportion the amount among the persons interested.²⁶

6.21. The Tribunal consists of one person who is, or has been or is qualified to be a judge of a High Court. In a particular case, the Central Government can nominate a person having expert knowledge in mining to assist the Tribunal, and where such nomination is made the interested persons can also nominate any other person for the same purpose.²⁷

6.22. At the commencement of the proceedings the Central Government and the person interested should state what is the fair amount of compensation in their opinion. After hearing the dispute the Tribunal makes an award determining the amount of compensation and apportioning the amount the persons interested.²⁸ A person aggrieved by among the award of the Tribunal can appeal to the High Court within thirty days from the date of the award.²⁹

(c) Tribunals under the State Acts

6.23. The provision for the establishment of Tribunals has been made in the Calcutta Improvement Act, 1911; U.P. Town Improvement Act, 1919, the Punjab Town Improvement Act, 1922, and the Nagpur Improvement Act, 1936. The provisions of all the Four Acts are similar. We therefore propose to give a summary of the Calcutta Act only. Under the Calcutta Improvement Act, 1911, the jurisdiction of the Tribunals is the same as that of the courts under the Land Acquisition Act, 1894.³⁰ The Tribunal is deemed to be a Court,³¹ and consists of a President and two assessors.³² The President of the Tribunal must be either (a) a member of the judicial service of not less than 10 years' standing in such service and who has at least for three years served as District Judge or subordinate Judge, or (b) a barrister, advocate or pleader who has practised in the High Court for not less than ten years.³³

¹⁹. Arb. Act, 1950, s. 12 which is applied by Rule 46.

²⁰. L. T. Rules, 1963, Rule 49.

²¹. Land Compensation Act, 1961, s. 2(5).

²². *Ibid* s. 18(2)—or L. T. Act 1949, s. 1(2) (c).

²³. The Coal-bearing areas (Acquisition and Development) Act, 1957.

²⁴. The Calcutta Improvement Act, 1911; the U. P. Town Improvement Act, 1919; The Punjab Town Improvement Act 1922; and the Nagpur Improvement Act, 1936.

²⁵. S. 14(2).

²⁶. S. 14(5) and (6).

²⁷. S. 14(2), s. 14(3).

²⁸. S. 14(4), (5) & (6).

²⁹. S. 20(1).

³⁰. S. 70.

³¹. S. 71(a).

³². S. 72(1).

³³. S. 72(2).

6.24. The decision of the Tribunal, in case of disagreement is taken by majority in the cases of measurement of land, or the amount of compensation or costs to be allowed. The President alone may decide question relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation is payable, or the apportionment of compensation when he considers that assessors' presence is not necessary. However, all questions of law and procedure are decided by the President.³⁴

6.25. The award of the Tribunal and orders for the payment of money are enforced by the Court of Small Causes as if it were a decree of that court.³⁵

6.26. The award of the Tribunal is final except in cases of appeals which lie under the Calcutta Improvement (Appeals) Act, 1911. Both the Calcutta and U.P. Town Improvement (Appeals) Acts provide for appeals to High Courts from the decisions of the Tribunals in the following cases :

- (a) Where the President of the Tribunal takes a decision in the absence of the assessors in respect of the questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation;
- (b) where the decision is that of the Tribunal on the certificate of the President that the case fit one for appeal or on the special leave to appeal granted by the High Court.³⁶

6.27. An appeal under section 3(1)(b) lies on one or more of the following grounds, namely :

- (i) that the decision is contrary to law or usage having the force of law;
- (ii) that the decision has failed to determine some material issue of law or usage having the force of law;
- (iii) that a substantial error or defect in the procedure provided by the Act which may possibly have produced error or defect in the decision of the case upon the merits.

6.28. The High Court can grant special leave to appeal only when the President has refused to grant

a certificate of fitness for appeal and the amount in dispute is five thousand rupees or upwards.³⁷

B. Arbitrators

6.29. The Land Acquisition Act of 1857 which was the first enactment on the subject of land acquisition for the whole of British India, had empowered the Collector to fix the amount of compensation by agreement, if possible but if there was no such agreement, the dispute had to be referred to arbitrators whose decision was to be final and could not be impeached, except on the grounds of corruption or misconduct of the arbitrators. The experience of the working of the Act revealed that the method of settlement of compensation by arbitration was unsatisfactory as the arbitrators were found to be incompetent and sometimes even corrupt. There was no machinery provided to get their decision revised as there was no appeal provided under the Act against the award of the Collector. The Land Acquisition Act of 1870 for the first time provided for the reference to a Civil Court instead of arbitrators for the determination of the amount of compensation when the Collector would not settle it by agreement. However, the Requisitioning and Acquisition of Immovable Property Act,³⁸ 1952, and the Defence of India Act,³⁹ 1962, which was intended to remain in force only for a specified period, provide for appointment of an Arbitrator for determining compensation in respect of requisitioned immovable property and of acquisition of such property.

C. Courts and Assessors in India

6.30. The Land Acquisition Act, 1870, which was the predecessor of the present Act had provided for the appointment of assessors to assist the Court in determining the amount of compensation for the land acquired under the Act. The Act empowered the Collector to make an award if there was an agreement between him and the persons interested as to the amount of compensation.⁴⁰ If the Collector was unable to agree with the persons interested as to the amount of compensation to be allowed he was required to refer the matter to the Court.⁴¹ The Court to which the reference was made was thereupon required to serve a notice on the Collector and the persons interested to appoint two qualified assessors (one by the Collector and the other by the persons interested) to aid the judge in determining the amount of the compensation.⁴² If either

³⁴. S. 77(1).

³⁵. Section 77(2).

³⁶. Section 3(1).

³⁷. Section 3 of the Calcutta Improvement (Appeals) Act, 1911 and Section 3 of the U. P. Town Improvement (Appeal) Act 1920.

³⁸. Section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952.

³⁹. Section 30 and 37 of the Defence of India Act, 1962.

⁴⁰. S. 14.

⁴¹. S. 15.

⁴². S. 19.

of the assessors was not nominated within the specified time the judge himself could appoint an assessor in his place.⁴³ On the appointment of assessor the judge and assessors could proceed to determine the amount of the compensation.⁴⁴

6.31. The opinion of the assessors was to be given orally and recorded by the judge in writing.⁴⁵ The opinion of the judge prevailed if he disagreed with the assessor or any of them upon a question of law or practice or usage having the force of law, and there was no right of appeal therefrom.⁴⁶ In case the judge and one or both of the assessors agreed as to the amount of compensation their decision became final.⁴⁷ In case of difference of opinion between the judge and both of the assessors as to the amount of compensation, the decision of the judge was to prevail.⁴⁸ The Collector or the person interested, could appeal against such a decision of the judge to the District Judge. However, if the decision appealed against was of a District Judge or the amount which the judge proposed to award exceeded five thousand rupees the appeal was to lie to the High Court.⁴⁹

6.32. The award was to be made in writing, signed by the judge and the assessors or assessor concurring therein.⁵⁰

6.33. The Act of 1894 gave up the system of assessors for assisting the court in determining the amount of compensation and replaced it by the procedure of the Collector making the award with a further right of reference to the Court. The reasons given in the Statement of Objects and Reasons of the Bill were that it was difficult almost throughout the country to obtain services of assessors who were really qualified to form a sound opinion on the subject of the valuation of land, and that the procedure of the Collector making the award with a right of reference to the court would in no way diminish the efficiency of the court in enquiries in which the value of the land was in issue. It was further stated that such a procedure would shorten litigation and diminish its expense.

6.34. The Select Committee, while recommending the abolition of the system of assessors, observed as follows:—

“As to the discontinuance of the system of assessors all authorities are agreed. It is the universal remark that competent assessors are not easily procurable, and that there is an irresistible tendency for the assessor to become not an adviser but a partisan, adding very largely to the cost of the trial without assisting the

Judge. In the words of Mr. Justice Parker, ‘the nominees are faithful to their trust and deliver their opinion with minds altogether unaffected by the evidence’.

D. Collector and the Court

6.35. Under the existing provision of the Land Acquisition Act, the Land Acquisition Officer, after issuing notice calling for objections, decides on the three matters prescribed in Sec. 11 i.e. the true area of the land, the amount of compensation and the apportionment of the compensation. Sections 9 to 15 describe the subject-matter and the nature of enquiry to be held by the Collector and provide for making of the final award in respect of the said subject-matter. Sections 18 to 28 provide for reference to court and the procedure to be followed therein in respect thereof. Sections 29 and 30 deal with apportionment of compensation. Before making the appointment of the compensation, the Collector can resort to any of the following three methods: (i) to accept an agreed formula; (ii) to decide for himself; and (iii) to refer to the Court if he thinks that the decision of the Court is necessary. But once the award is made, it becomes final and it can be reopened only in the manner prescribed i.e., by way of a reference to the court under S. 18 of the Act.

6.36. The award made by the Collector under S. 12 is, in a sense, a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, *inter-alia* in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision. It is, in law, an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. The latter may but is not bound to, accept the offer. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer, S. 18 gives him the statutory right of having the question determined by Court and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case, it is on the amount thus determined judicially that the acquisition proceedings would be concluded.⁵¹ It is also open to the Government even after the award is made, but before possession is taken, to withdraw from acquisition of any land in exercise of the powers conferred by Section 43 of the Land Acquisition Act. It is, therefore, not the award of

⁴³. S. 20.

⁴⁴. S. 21.

⁴⁵. S. 27.

⁴⁶. S. 23.

⁴⁷. S. 29.

⁴⁸. S. 30.

⁴⁹. S. 34.

⁵⁰. S. 35.

⁵¹. AIR 1961 S.C. 1500 (1503), Harish Chandra v. Dy. L.A. Officer.

the Collector which is the source of the right to compensation. The award only fixes the amount of the offer of the appropriate Government, which is made because the Government has taken over, or intends to take the land of the owner under the authority conferred by the Land Acquisition Act.⁵² The right of the owner of the land is extinguished when Government takes possession of the land after an award of compensation is made.⁵³

6.37. The Collector is not authorised finally to decide the conflicting rights of the persons interested in the amount of compensation. His primary concern is with the acquisition of the land. The Collector has no power to adjudicate finally upon the title to compensation; that dispute has to be decided either in a reference under S. 18 or under S. 30 or in a separate suit. Consequently, the payments of compensation under S. 31 to the person declared by the award to be entitled thereto discharges the State of its liability to pay compensation (subject to any modification by the Court), leaving it open to the claimant to agitate his right, though devolved on him after the award in a reference under S. 30 or by a separate suit.⁵⁴

6.38. Under the Land Acquisition Act, the expression 'Court'⁵⁵ is defined to mean a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is empowered to do) under section 3(d) a special judicial officer within any specified local limits to perform the functions of the Court under the Act. The court of the District Judge is the principal Civil Court of original jurisdiction.

6.39. Every award signed by the Judge is deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2(2) and section 2(9) respectively of the Code of Civil Procedure.

6.40. An appeal lies to the High Court from the award of the court subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decree. An appeal also lies to the Supreme Court from any decree of the High Court based on such appeal as aforesaid subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof.⁵⁶

E. Courts

6.41. Questions of disputed compensation are determined by the Courts in the U.S.A. as well as

Australia. In the United States, there are federal courts as well as State Courts. The Federal District Courts have original jurisdiction of all proceedings to condemn real estate for the use of the U.S. or its departments or agencies.⁵⁷ The Federal Rules of Civil Procedure generally and Rule 71A specially govern the proceedings for the condemnation of property.⁵⁸ Under the Tucker Act, the jurisdiction of the Federal District Court is confined to claims not exceeding \$ 10,000.

6.42. So far as the U.S. Government is concerned, the Secretary of the Treasury or any other authorised officer of the Government may acquire for the U.S. real estate for the erection of a building or for other public uses by condemnation, under judicial process.⁵⁹ The Attorney General has to commence condemnation proceedings in the Federal Court in the name of the U.S. within thirty days of the receipt of an application of the Secretary of the Treasury or any other authorised officer for the purpose.⁶⁰ The position of the U.S. Government as litigant in this proceeding is the same as that of any other litigant.

6.43. In these proceedings⁶¹ the petitioner may file a declaration of taking signed by the authority empowered to acquire the lands described in the petition, declaring that said lands are taken for the use of the U.S. Such a declaration should contain :

1. Statement of the authority under which and the public use for which said lands are taken.
2. A description of the lands taken sufficient for the identification thereof.
3. A statement of the estate of interest in said lands taken for said public use.
4. A plan showing the lands taken.
5. A statement of the sum of money estimated by the said acquiring authority to be just for the land taken.

6.44. On filing the declaration of taking and depositing the estimated compensation in the court the title to the said land in fee simple absolute, vests in the U.S. and the right to just compensation vests in the person entitled. The vesting of title in the U.S. is not affected if the judgment of the court is appealed. The court will ascertain and award the just compensation.

⁵². A. I. R. 1966 S.C. 237. (243) Grant v. State of Bihar.

⁵³. Sarju Prasad Sahu v. State of Uttar Pradesh (AIR 1965 SC 1763).

⁵⁴. A. I. R. 1966 SC 237(244) *Ibid*.

⁵⁵. Section 3(d) of the Land Acquisition Act.

⁵⁶. Section 54, *Ibid*.

⁵⁷. 27 Am Jur 2d—Eminent Domain, S. 381.

⁵⁸. *Ibid*.

⁵⁹. 28 U.S. Code, S. 1346.

⁶⁰. 40 U.S. Code, S. 257.

⁶¹. *Ibid* S. 258a. For the text of sections 257 and 258a see Annexure II.

6.45. The State courts of America have jurisdiction in matters of Eminent Domain if the same is given to them by the provisions of the statute. The statutes ordinarily provide for filing of a petition for condemnation in specified courts and service of notice on interested parties.²⁷

6.46. In Australia, any state or person entitled to compensation for the acquisition of land has to make and serve his claim for compensation on the Minister within 120 days, after the publication of the notification of acquisition.²⁸ The Minister causes such a claim to be examined and a report made to him as to the value of the land and amount of the claim and the amount of damage to which the claimant is entitled. After the receipt of the report, the Minister has to notify the claimant that he admits the claim for compensation in its entirety or in respect of certain items only or that he disputes the same.²⁹ A disputed claim for compensation may be determined as follows³⁰ :

- (a) By agreement between the Minister and the claimant; or
- (b) By an action for compensation by the claimant against the commonwealth; or
- (c) By a proceeding in a Federal or State Court on the application of the Minister.

6.47. An action for compensation may be instituted by the claimant against the Commonwealth in the High Court or in any State Court of competent jurisdiction, and subject to the following provisions, the action is heard and determined in the same manner as ordinary actions³¹ :—

- (a) The Action must be tried without a jury;
- (b) The Court must have no power to direct a reference to arbitration unless by consent of parties.

6.48. The plaintiff is required in his statement of claim declaration or other like document, to specify the total amount of compensation claim and the amount (if any) attributable to each item in the claim.³²

6.49. On the trial of the action, the court is required to determine the total amount of compensation which would be payable by the Commonwealth to the plaintiff for the parcel of land acquired if no amount for enhancement of value were set off in accordance with the provision of Section 28(2) and determine the amount (if any) attributable to each item in the prescribed form of the

claim. Where two or more persons are entitled to share in the compensation, the Court is also required to determine the amount payable to each person and the manner in which it should be paid.³³

6.50. The determination of the Court is final and conclusive and without appeal and is binding upon all persons having any right to compensation whether those persons are represented before the Court on the hearing of the application or not.

6.51. Where no claim for compensation is made within six months after the right to make the claim arose, the Minister is required to apply to the Court to determine the amount of compensation. The application is required to be made to the High Court or to the Supreme Court if the Minister considers the compensation award will amount to more than £ 500 but such an application is to be made to a County, District or Local Court if the Minister considers that the compensation awarded will not amount to more than £ 500.

6.52. The determination of the Court is final and conclusive and without appeal.

6.53. The above discussion would show that two out of the five agencies for determining the compensation which were tried under the earlier Land Acquisition Acts in this country have been found to be unsuitable. The Arbitrators were found to be incompetent and sometimes even corrupt. The system of Assessors for assisting the Court was also discontinued as competent Assessors were not easily procurable and there was an irresistible tendency for the assessors to become not advisers but partisans, adding very largely to the cost of trial without assisting the Judge. We are not in favour of introducing the system of arbitrators or assessors which has been tried and has failed, nor are we in favour of setting up of the Tribunal corresponding to the Lands Tribunal in the United Kingdom. It may be recalled that the Lands Tribunal of United Kingdom consist of professional Surveyors and Valuers as well as legal experts. We are doubtful whether the services of competent surveyors and valuers would be available for assisting the Judge at district headquarters in the matter of determination of compensation for acquisition and we are also apprehensive that they are likely to act in the same manner in which the old arbitrators and assessors acted. Moreover, the decision of Land Tribunal in United Kingdom is final save that an appeal can be taken to the Court of Appeal on points of law on the other hand, under the existing

²⁷. 27 Am. Jur 2d, Eminent Domain, S. 380.

²⁸. S. 32 of the Australian Land Acquisition Act, 1906-1936.

²⁹. S. 34 *Ibid*.

³⁰. S. 36 *Ibid*.

³¹. S. 37 *Ibid*.

³². *Ibid*.

³³. S. 37 *Ibid*.

³⁴. S. 39 *Ibid*.

law, as well as under the scheme which we are recommending, we would like to provide for an appeal right up to the Supreme Court subject to Constitutional restrictions. We are, therefore, of the opinion that the system of Lands Tribunal would not be suitable for our country.

6.54. It remains to be considered whether the determination of compensation should be left to the Collector and the Court as under the existing law or to the Courts simply. The State Governments except those of Gujarat and Orissa are in favour of continuing the present system of determination both by the Collector and the Court on a reference from the former. On the other hand, there has been a consensus of opinion among the persons affected by the land acquisition that the determination of compensation should be left entirely to an independent agency of the Courts. We proceed to examine the merits of these suggestions.

6.55. The Government of Gujarat found that the draft award submitted by the Land Acquisition Officer to the Government were incomplete and defective in many respects. That Government had pointed out that the proposals made in the draft awards for fixing compensation were not substantiated by convincing reasons, after carefully examining the evidence produced before the Land Acquisition Officer, the instances of sales and other data available in support of the valuation. Moreover, the legal formalities complied with for inviting claims from the interested persons etc. were not properly indicated in the draft awards.

6.56. The Government of Orissa, which is in favour of determination of compensation entirely by the Civil Courts has observed that the Land Acquisition Act is very old and has become out-dated. According to the State Government the present practice of getting the compensation determined first by the Revenue Officer and then getting it vetted by the Civil Court is an unnecessarily dilatory process and leads to uneconomical acquisitions. The litigation cost to the State is more than the value of the land itself. If the determination of compensation is left to the Civil Court from the beginning, the State Government thinks that it will be less costly for the State to acquire a piece of land than to prolong the process and pay more.

6.57. Even some of the State Governments who have advocated the retention of the existing agency have frankly conceded the defects in the existing system. During the year 1965, the Board of Revenue, Madras had scrutinised a selected and representative cases ending in enhancement of compensation by the Civil Court. As a result of this scrutiny, it was concluded that the defects noticed on the part of the Land Acquisition Officers fall under the following five broad categories:—

- (i) rejection of documents for vague reasons;
- (ii) omission to discuss land value in great detail and to fix the appropriate market value;

- (iii) omission to look into the records of the sub-Registrar's Office to trace transactions in the neighbourhood and to work out the correct market value;

- (iv) omission to collect sale particulars exhaustively; and

- (v) incorporation of irrelevant details in the award.

6.58. A study of these cases discloses that the enhanced compensation awarded by the Civil Court range from 2 to 10 times the one fixed by the Land Acquisition Officer.

6.59. The Government of West Bengal has pointed out that in dealing with sales, the Collector usually takes an average mean of the sales and awards compensation on that basis, whereas under the law it is only a sale which is proximate in time to the date of the notification under Section 4(1) of the Land Acquisition Act in respect of land similarly situated and with similar advantages and which proved to be a transaction between willing vendor and a willing purchaser would form a reliable yardstick for determining the market value. In a recent case the Supreme Court has clearly held that where sale-deeds pertaining to different transactions are relied on by the Government, that representing the highest value which similar land in the locality is shown to have fetched in a bona fide and voluntary transaction near about the time of the acquisition should be preferred to the rest unless there are strong circumstances justifying a different course: and that the average of more than one sale-deeds should not be taken into account."

6.60. The Government of Kerala placed before us a number of cases disposed of and referred to the Court during the years 1960-61 to 1964-65. At our suggestion their Board of Revenue made a special study for finding out the causes responsible for enhancement of the compensation. In this context the following observations of the Kerala Board of Revenue are noteworthy:—

"Scrutiny of some of the land Acquisition Review cases in which abnormal enhancement of compensation was awarded by Courts reveals that despite the instructions issued from time to time, from the Board and Government regarding the award of reasonable compensation, there is a tendency on the part of the Land Acquisition Officer not to use their discretion in a judicious manner in arriving at the market value with reasonable accuracy. They award low compensation amount thinking that by so doing they are on the safer side and will not be called upon to answer payment on an increased compensation. The failure of the Land Officers in this respect results in loss to the persons deprived of the property besides loss to Government by way of interest, Court cost.

⁷⁰. Sri Rani M. Vijayalakshamma Rao Bahadur Rane v. Collector of Madras (1968) 2 SCJ 869.

pleaders fee etc., if the parties go to Court.

"Fixation of compensation by the Land Acquisition Officers in a haphazard manner against the instructions in the Land Acquisition Manual, and the failure to examine the relevant documents and facts of the circumstances and discuss them in the award also result sometimes in disproportionate enhancement in the compensation by the Courts."

6.61. The above observations speak volumes in favour of the view that the present system of determination by the executive agency is not working satisfactorily.

6.62. A number of persons who were adversely affected by land acquisition have pointed out to us that the Collector is not in a position to differ from the compensation calculated in accordance with the revenue circulars or instructions and that a large number of references are made to the Court because the awards given by the Collectors are not satisfactory. It has also come in evidence before us that compensation has been enhanced in 90 out of 100 cases which have been referred to the Courts under Section 18 of the Act. Besides, a number of cases do not come to the Courts at all because of the lethargy on the part of the ignorant peasants who are inclined to accept the Collector's award as final. On the other hand, there are land owners who resort to one legal proceeding or the other in order to delay acquisition on account of the fear of not getting the correct amount of compensation from the Collector. It has been argued that owners of property would not indulge in these dilatory tactics if there were a hope of getting a fair deal which can be given to them by an independent judicial authority only.

6.63. Evidently, an executive agency such as that of the Collector cannot be regarded as the proper forum for determination of compensation for two reasons. In matters of compensation, complicated legal questions often arise and the Collector is generally not in a position to understand and appreciate the implications connected with the valuation of land. This is evident from the fact that in some States, the Collectors have awarded compensation on the basis of an average mean of sales during a specified period prior to the notification under Section 4. Secondly, it has been noticed that the approach of the Collector to the problem of compensation has generally been biased. The executive mind perhaps by habit and tradition frequently finds it difficult to hold the scales even between the State and the citizen and repeatedly tilt it in favour of the State.

6.64. We have considered the pros and cons of the matter and are of the view that the determination of compensation should be left only to the Courts which alone are in a position to inspire confidence in the general public. We have been very

much impressed by the provisions of the Australian law which contemplates determination of a disputed claim of compensation by an agreement between the Government and the claimant and by an action in court by a suitable proceeding in the court in default of such agreement.

6.65. We have also pointed out above that the procedure of settling the compensation by agreement has been adopted in the Requisitioning and Acquisition of Immovable Property Act, 1952, the Coal Bearing Areas (Acquisition and Development) Act, 1957, and the Defence of India Act, 1962. As pointed out by the Law Commission, this is a better method than an enquiry by the Collector which causes considerable delay in the matter of compensation."

6.66. The Commission has recommended that, as far as possible, the Collector should try to settle all matters in dispute by negotiations and agreement and that a reference to the Court should be made if no agreement was reached. While we agree with the view that compensation may be fixed by an agreement between the parties, we think that it is not desirable for the Collector to negotiate in the matter of compensation as such negotiations are likely to give rise to corrupt practices. In our view all that the Collector should do is to make an offer on the basis of the material available with him and if that offer is accepted by the land-owner/person interested, the matter ends, but if he does not expressly accept that offer or he does not communicate his reaction to the offer, it should be deemed to be a refusal in which case the Collector should immediately thereafter refer the matter to a Court specially provided for dealing with the land acquisition cases.

6.67. With regard to the composition of the Court for determination of compensation, we are of the view that it should consist of a single person who is a functioning District Judge or a retired Judge of the High Court, or a senior subordinate Judge of more than 10 years standing. The senior subordinate Judge should exercise jurisdiction only on transfer of the case by the District Judge. The term 'District Judge' will include an Additional District Judge or a retired District or Additional District Judge.

6.68. We are of the opinion that in cases where acquisition of land is made for a big project or for Town Planning Schemes affecting a large section of the population it may not be possible for the regular civil courts to decide the numerous cases that may be arising out of such acquisition proceedings. We feel that the level of the court for deciding such cases should also be raised. We recommend that a special court consisting of a High Court Judge should be set up for the disposal of cases arising out of acquisition for big projects.

¹¹. See para 31, page 14 of the Tenth Report of the Law Commission of India on the Law of Acquisition and Requisition of Land.

Proceedings by the Collector before making reference to the Court

6.69. The next question which arises for consideration is what should be the procedure for settling the area of the land, the compensation and apportionment thereof among the persons interested. After the publication of the declaration, the notices to the persons interested will have to be issued as envisaged by Section 9 of the Land Acquisition Act. As we have decided to abolish altogether the procedure of an award by the Collector and have recommended instead reference to the court in cases of dispute, Sections 11 to 13 of the present Act will have to be recast suitably. As the scheme of settlement of the disputes as to area, compensation, etc. proposed by us is on the same lines as that of the Law Commission, we recommend that the procedure as prescribed in Section 12 of the draft Bill of the Commission should be followed by the Collector for recording the agreement of the parties as well as for reference of the matters for determination of the court. The provisions of Section 12 of the said Bill are reproduced in the Annexure. Briefly stated, under that provision, the Collector has to arrive at an agreement after consultation with the appropriate Government or the company or authority for which the acquisition is sought to be made and after calling for the requisite information from the claimants. The agreement is required to be signed by the parties and recorded by the Collector. In case of failure to arrive at an agreement, the matters in dispute are required to be referred to the Court.

6.70. It has been brought to our notice that some small land-holders do not appear before the Collector either because the notices are not served upon them or because they are ignorant of the law or the procedure that is followed in such cases. We feel that even in such cases the amount of compensation should be determined by the Court and not by the Collector. We, accordingly, recommend that in case where the parties, served with notices under section 9 of the Act, do not appear before the Collector, it should be deemed to be a case where no agreement has been reached and the matter should be referred to the court and the amount of estimated compensation deposited in the court.

6.71. The amount of compensation as agreed between the parties or estimated by the Collector in the absence of such agreement should be tendered to the person interested before physical possession of land is taken by the Collector. The payment of this amount would be without prejudice to the right of the party to claim further compensation before the court. The amount may be deposited in the court in case he refuses to accept the amount.

6.72. While making a reference to the court, the provision of Section 20 of the Bill of the Law Commission* which correspond to Section 19 of the present Act should be followed as they envisage submission of a detailed statement to the court.

Procedure to be followed by the Court

6.73. On receipt of a reference from the Collector, it is necessary that the Court should give notice of the date of hearing not only to all the persons interested but also to the Collector and to the Central or the State Governments and the company or authority for whom acquisition is sought to be made. Section 51* of the draft bill of the Law Commission provides for such notices and may be adopted in place of Section 20 of the Land Acquisition Act.

6.74. Section 22 of the Act provides that every such proceeding shall take place in the open court, and all persons entitled to practise in any Civil Court in the State shall be entitled to appear, plead and act in such proceedings. We recommend the adoption of this Section subject to the modification that any person who is not an advocate may also appear, plead and act in such proceedings. It is a matter of common knowledge that some persons are not in a position to engage practising lawyers. We feel that the interests of such persons should not be allowed to suffer for want of proper representation. We, therefore, recommend that the Party should have the right of appearing not only in person or through an advocate but also through a representative of his choice though not an Advocate. We make this recommendation because we feel there are quite a few persons outside the legal fold who can act and plead as well as any average advocate and who would prove to be quite helpful to the Court on the limited issues before it.

6.75. Section 25, sub-section (1), of the Act provides that when the applicant has made a claim to compensation the amount awarded to him by the court shall not exceed the amount so claimed or be less than the amount awarded by the Collector. Sub-section (2) provides that when the applicant has refused to make such claim, or has omitted without sufficient reasons to make such claim, the amount awarded by the court, shall in no case, exceed the amount awarded by the Collector. Sub-section (3) provides that when the applicant has omitted for a sufficient reason to make such claim, the amount awarded to him by the court shall not be less than and may exceed the amount awarded by the Collector.

6.76. It will thus be seen that section 25(2) places certain restrictions on the amount of compensation to be awarded by the Collector. In our view, there seems to be no justification for imposing restrictions of this kind, specially when the question will be decided by a competent judicial officer.

6.77. We have already recommended that in case where even the parties served with notices under Section 9 of the Act do not appear before the Collector, it should be deemed to be a case where no agreement has been reached and the matter should be referred to the Court. In our view the final decision as to what is the appropriate amount of compensation under the law should be left to the court. We, therefore, recommend that the provisions of Section 25(1) only may be retained with verbal

*Vide Annexure.

changes so as to accord with our scheme. The provisions contained in sub-section (2) and (3) of section 25 of the Act, may, however, be omitted.

6.78. With regard to the form of the final order of the court, we would prefer the detailed provisions made in this regard in the corresponding Section 58 of the Bill of the Law Commission.* In particular, we find that Clause 5 of Section 58 required the Court to state in the final order the market value of items such as land, buildings, trees etc. separately. A provision of this kind would enable the party to know exactly the value of the items separately.

6.79. Every final order of the court should be executable as if it were a decree of the Court as provided in Section 59* of the Bill of the Law Commission, which we adopt.

6.80. With regard to the apportionment of compensation, we adopt the provisions of Section 54* as given in the Bill of Law Commission.

6.81. We have recommended that disputes about the adequacy of compensation arising out of damage caused by the preliminary survey undertaken before the issue of notification under section 4(1), under the scheme recommended by us, should be referred to the Court. Similarly, disputes about the adequacy of compensation arising out of damage due to preliminary investigation carried under Section 4(2) and for which a provision has been made under section 5 of the Act should be referred to the Court. Section 57* of the draft Bill of the Law Commission which lays down the procedure for references of this kind may be adopted.

6.82. The provisions of Section 53 of the Land Acquisition Act which make the Code of Civil Procedure applicable to the proceedings before the Court should be retained.

Appeals in Proceedings under the L.A. Act

6.83. We have discussed what should be the forum and procedure for determining the compensation. We now proceed to consider the provisions of the Act relating to appeals. Under the existing Act, the Court to which a reference can be made by the Collector may be either the court of the District Judge appointed by the appropriate Government within any specified local limits to perform the functions of the court under the Act. Section 54 of the Act lays down that in any proceeding under this Act, an appeal from the award or from

any part of the award of the court shall lie only to the High Court, notwithstanding anything contrary contained in any enactment for the time being in force. The High Court is thus the only forum of appeal from the decision of the reference court, irrespective of the value of the claim or of the fact whether the appeal is from a District Court or an Assistant Judge's Court or the Court of a Special Judicial Officer such as that of a Subordinate Judge.

6.84. The Law Commission had recommended that an appeal from the court of a Subordinate Judge or even a Munsiff where the claim for compensation is within his pecuniary limits should lie to the court to which appeals ordinarily lie from that court. The Commission recommended that an appeal should lie to the High Court only from any decree of a District Court passed on an appeal to it from the decision of the Subordinate Court, if the amount or the value of the subject-matter in dispute in appeal exceeds Rs. 2,000 or the case involves any question of title to land. The Commission also recommended that no appeal should lie from any order (whether final or not) passed by the court on a reference under Sections 5, 34 and 68* of their draft Bill.¹³

6.85. Under our scheme, the court should consist of a single person who is functioning as District Judge or a retired Judge of the High Court or a Senior Subordinate Judge of more than 10 years standing. The term 'District Judge' will include an Additional District or a retired District or Additional Judge.

6.86. In view of our recommendation that the court under the Land Acquisition Act should be presided by a senior and experienced Judge, we feel that the proper forum of appeal against the final order passed by any court under the Act should only be the High Court as provided under the Land Acquisition Act. However, in our view, the right of appeal should be excluded in the following cases:—

- (1) where the amount or value of the subject-matter in dispute in appeal does not exceed Rs. 2,000.
- (2) where the order passed by the court relates to compensation for damage done in the course of a preliminary survey¹³ prior to the notification under Section 4(1), or of preliminary investigation under Section 4(2);¹⁴

*Vide Annexure.

¹³. Vide Tenth Report of the Law Commission, pages 45 and 83 of the Annexure.

*Section 68 in the draft Bill corresponds to S. 49 of the Land Acquisition Act.

¹⁴. We have recommended incorporation of provisions relating to preliminary survey prior to the notification under section 4(1).

¹⁵. Under Section 5 of the Land Acquisition Act, compensation for necessary damage done during course of preliminary investigation is required to be paid or tendered at the time of entry on the land. We have recommended that in case of dispute as to the sufficiency of the amount was paid or tendered, the dispute should be referred to the Court for its decision.

(3) Where the order passed by the court relates to compensation for standing crops and trees or for any other damage for sudden dispossession in a case of immediate acquisition of land in an emergency."

6.87. We, further, recommend that the right of appeal should be available to the party when the case involves any point of law or any question of title to the land, irrespective of the amount or the value of the subject matter in dispute in appeal.

6.88. We find that the Law Commission had proposed that no appeal should lie from any order passed by the court *inter alia* on a reference under second proviso to sub-section (1) of section 68 of their draft Bill which corresponds to the second proviso to section 49(1) of the Land Acquisition Act. Under this proviso, if any question as to whether the land proposed to be acquired does or does not form part of a house, manufactory or building within the meaning of section 49(1) is required to be referred by the Collector to the Court for determination. An order on a reference under section 49 is neither an award nor a decree and is consequently not appealable under section 54 of the Land Acquisition Act. However, as we have provided for an appeal from final orders of the court set up under the Act, such an Order would be appealable under our scheme unless the amount or value of the subject matter in dispute in appeal does not exceed Rs. 2,000. Under the Bill of the Law Commission, the right of appeal is totally excluded when such an order is passed irrespective of the amount or value of the subject matter. However, we would not like to exclude the right of appeal against the order passed by the court on a reference under the second proviso to section 49(1) *in toto* as has been done by the Law Commission.

6.89. As regards appeals to the Supreme Court, Section 54 of the Land Acquisition Act provides that from any decree of the High Court passed on such appeal as aforesaid, an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 108, and in Order XLV thereof. Section 109 of the Code of Civil Procedure which deals with appeals to the Supreme Court runs as follows:—

"Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may from time to time be made by the Supreme Court regarding appeals from the courts of India and to the provisions hereinafter contained an appeal shall lie to the Supreme Court—

(a) from any judgment, decree or final order passed on appeal by a High Court or by any other court of final appellate jurisdiction;

(b) from any judgment, decree or final order passed by a High Court in the exercise of original civil jurisdiction;

(c) from any judgment, decree or final order when the case as hereinafter provided is certified to be a fit one for appeal to the Supreme Court."

6.90. Section 110 of the Civil Procedure Code provides that the right of appeal under clauses (a) and (b) of Section 109 will be available only in cases where the amount or value of the subject matter of the claim or property in suit and in dispute on appeal to the Supreme Court must be Rs. 20,000 or upwards. This section does not make any reference to clause (c) of Section 109. The absence of any mention of Section 109 C.P.C. in Section 54 shows that the Legislature did not intend to give a right of appeal against an order of the High Court, unless it fell under clauses (a) and (b) of Section 109 which are dealt with in Section 110. Section 54 of the Land Acquisition Act thus excludes a right of appeal on the ground of a case being fit one to appeal under clause (c) of Section 109.

6.91. In this connection, we may refer to the provisions of Article 133 of our Constitution which relates to appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to Civil matters. Under the provisions of this Article, an appeal lies to the Supreme Court from any judgment, decree or final order in a Civil proceeding of a High Court if the High Court certifies that:

(a) the pecuniary value of the subject matter in dispute in the first instance and appeal is Rs. 20,000 or upwards;

(b) the judgment, decree or final order involves directly or indirectly claim in respect of property valued at Rs. 20,000 or upwards; or

(c) the case is a fit one for appeal to the Supreme Court.

6.92. It is clear that the constitutional rights of a litigant under Article 133 cannot be controlled by anything in Ss. 109-110 of the C.P. Code. In fact, these rights cannot be curtailed or taken away by any enactment or provisions made in any statute. Once, therefore, the conditions of Art. 133(1) are satisfied, a certificate cannot be refused on the ground that the person has no right of appeal, in the circumstances of the case under Ss. 109-110, C. P. Code.⁷⁶ In case of conflict between Art. 133 and Ss. 109-110, the former is to prevail."

6.93. The provisions of Section 54 of the Land Acquisition Act need to be amended as to be in conformity with the provisions of Article 133(1) of the Constitution. Apart from this aspect of the

⁷⁶. Section 34 of the Draft Bill of Law Commission which we have adopted, relates to payment of compensation for crops and trees in an emergency. Under this provision, in case of dispute as to the sufficiency of the amount paid or offered by the Collector, at the time of taking possession the dispute is required to be referred to the court for decision.

⁷⁷. *Ruder V. Mirtunjay*, A. 1957 All. 28(32)

⁷⁸. *Ramaswami V. Official Receiver*, A. 1951 Mad. 105

matter, we feel there is no justification for restricting the right of appeal to the Supreme Court in the manner adopted in Section 54 of the Act.

Forum for Determination of the Existence of Public purpose

6.94. We have considered above the question of forum for determining the compensation and the right of the party to appeal against the decision of the court on the question of compensation. As we have recommended that the existence of public purpose should be made justiciable, the question which remains to be considered is whether the court which is empowered to determine compensation should also be empowered to determine the question of public purpose. Article 32 and Article 226 of our constitution guarantee to everybody the right to move the Supreme Court and the High Court respectively by appropriate proceedings for the enforcement of the Fundamental Rights which are enumerated in Part III of the Constitution. As the right to property is a Fundamental Right, and as the existence of public purpose is a condition precedent to the exercise of the power of acquisition under Article 31, it would be open to the person complaining of the violation of Article 31 to move the Supreme Court or the High Court for appropriate relief under the provisions of Article 32 or Article 226. It is not desirable to entrust the jurisdiction, in the matter of determination of public purpose, to a court lower than that of a High Court because we feel that such a provision is likely to give rise to needless litigation of a long duration obstructing the completion of the acquisition proceedings. Ordinarily, it is only in borderline cases (and the number of such cases would be very few) that there would be a difference of opinion between the State and the individual concerned on the exis-

tence of a public purpose. *Prima-facie*, Government are good Judges of the existence of a public purpose. Acquisition for purposes which are evidently public purposes (as illustrated in the inclusive definition proposed by us) are not likely to be challenged merely on the ground of want of a public purpose. We feel that it is the dissatisfaction caused by the award of inadequate compensation coupled with the normal and natural reluctance to part with one's land which are mainly responsible for making an interested person seek the help of the Courts. A party dissatisfied with inadequate compensation would, of course, challenge the acquisition on all grounds including the absence of public purpose though there may not be much substance in that ground. If public purpose were made justiciable in subordinate courts near about the places of residence of the land owner, there would be an irresistible tendency to rush to the local court in every case an acquisition is sought to be made and the matter will eventually be taken to the High Court or the Supreme Court by way of appeal against the decision of the Subordinate Court. This procedure, if accepted, is bound to involve a lot of delay with the result that the implementation of the projects for which land is being acquired will be hampered. On the other hand, it is only genuine cases of difference of opinion on the existence of public purpose which are likely to go to the High Court or the Supreme Court in its writ jurisdiction. A writ petition to the Supreme Court or the High Court provides a cheaper and speedier remedy to a person for the enforcement of his Fundamental Rights. The party would ordinarily consider all the pros and cons before approaching the High Court or the Supreme Court. We accordingly recommend that the existence of public purpose should be made justiciable only in the Supreme Court or the High Court in the exercise of its writ jurisdiction under Article 32 or 226, as the case may be.

ANNEXURE

(Ref. Para No. 6.69)

Extracts of the relevant provisions from the Draft of the Law Commission

Fixation of Area and Value

Section 12 Proceedings by Collector

(1) On the day so fixed, or on any other day to which the proceedings may be adjourned, and after consultation with the appropriate Government, and, if the acquisition is made for purposes other than those of the Government, also with the person or authority for which the acquisition is made, and after calling for such information from the claimants as he thinks necessary, the Collector shall :—

- (a) fix by agreement with all the persons referred to in clause (b) the true area of the land, the compensation.....to be allowed for the land and the person entitled to receive the same;
- (b) also ascertain whether all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information whether or not they have respectively appeared before him, are agreed as to the apportionment of the said compensation among themselves,

Reference to Court

Section 20 Collectors statement to the Court

(1) In making a reference under sub-section (3) of Section 12, the Collector shall state for the information of the court in writing

- (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon, attaching a plan of the land;
- (b) the names of the persons who, he has reason to believe, are interested in such land; and
- (c) the amount of compensation fixed by him under sub-section (3) of section 12 and the basis on which it was arrived at.

(2) To the said statement shall also be attached a schedule giving.....particulars of the notices served upon, and of the statements, in writing made or delivered by, the parties interested respectively, and any other information available with the Collector relating to the matters referred to the Court.

Reference under Section 12

Section 51, Service of notice

The court shall, on receipt of the reference by the Collector under sub-section (3) of section 12, cause a notice specifying the day on which the court will proceed to determine the reference, and directing their appearance before the court on that day, to be served on the following persons, namely :—

- (a) the Collector;
- (b) all persons interested in the reference; and
- (c) if the acquisition is not made for the Central Government or any State Government, the person or authority for whom it is made.

Section 54 Apportionment of compensation S. 29

(1) Where there are several persons interested in the amount of compensation, the court shall apportion the

amount according to the interest of each such person, and shall specify in the final order the amount due to each.

(2) Each such person shall be entitled to obtain execution of the final order to the extent of the amount due to him, without the consent or concurrence of the others persons.

Other References

Section 57—Procedure in other references under the Act

Where any matter is referred to the court for decision under any provision of this Act other than sub-section (3) of section 12 or clause (b) of sub-section (1) of section 45, the following provisions shall apply—

(a) the officer making the reference shall :

- (i) state for the information of the court in writing the points on which the decision of the court is sought and the views of the officer thereon, with reasons therefor; and
- (ii) attach a summary of all material available with him which may be useful to the court in the determination of the reference;
- (b) the court shall, on receipt of the reference cause a notice specifying the day on which the court will proceed to determine the reference and directing their appearance before the court on that day, to be served on the following namely :—
 - (i) the officer making the reference;
 - (ii) all persons interested in the reference; and
 - (iii) where the reference has arisen out of any proceeding for the acquisition of land for any person authority, that person or authority.

General provisions

Section 58—Form of Final Order

(1) Every final order of the court under this Act shall be in writing signed by the Judge, and shall specify the points for decision, and the decision thereon, together with the grounds of the decision.

(2) Every such order shall be deemed to be a decree and the statement of the grounds of every such order a judgment within the meaning of clause (2) of section 2 and clause (9) of section 2, respectively, of the code of Civil Procedure, 1908.

(3) Every such order shall also state the amount of costs incurred in the proceedings before the court, and by what persons and in what proportions they are to be paid.

(4) When, in proceedings held on a reference made by an officer, the order of such officer is not upheld, the costs shall ordinarily be paid by such officer, unless the court shall be of opinion that the claim of the party was so extravagant or that he was so negligent in putting his claim before such officer that some deduction from his costs should be made or that he should pay a part of officer's costs.

(5) Where the final order determines the amount of compensation under section 21, the court shall, where-

ever practicable, state therein separately the market value of the following items, namely :—

- (i) Land, exclusive of things attached to the earth or permanently fastened to anything attached to the earth ;
- (ii) buildings ;
- (iii) structures other than buildings ;
- (iv) trees ; and
- (v) other items.

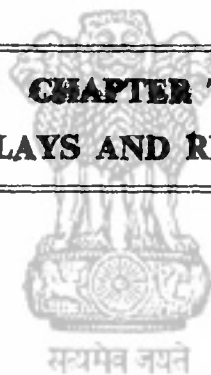
Section 59—Execution of final order

Every final order of the court under this Act shall be executable as if it were a decree of the court, and the provisions of the Code of Civil Procedure, 1908, relating to execution shall, as far as may be, apply to it.

Provided that execution shall not be issued on any such order against the Government or any officer thereof unless it remains unsatisfied for a period of three months computed from the date of such order.



CHAPTER 7
PROCEDURAL DELAYS AND REMEDIES THEREFOR



INDEX

	PARAS No.
1. Scheme of Land Acquisition Act, 1894	7.2 to 7.3.
2. Five stages prior to Section 4(1) notification	7.4.
3. Steps for acquisition under the Act	7.5.
4. Time-limits for certain steps	7.6 to 7.9.
5. Measures adopted by States for minimising delays	7.10 to 7.16.
6. Instances of Delay	7.17 to 7.19.
7. Recommendations of Law Commission	7.20 to 7.22.
8. Recommendations of the Thacker Committee.	7.23.
9. Recommendations of the Expert Group	7.24.
10. Analysis of Causes of delay	7.26.
11. Our approach to the problem	7.27 to 7.30.
12. Sections 3A and 3B of the Bombay Amendment Act	7.31 to 7.32.
13. Our recommendations	7.33 to 7.53.
(a) Taking of possession and payment of compensation	7.45 to 7.48.
(b) Fixing of Time Limits	7.49 to 7.53.
14. Directorate of Land Acquisition	7.54 to 7.55.
15. Conclusion	7.56 to 7.57.
16. Scheme of the Law Commission laying down time-limits for each stage of acquisition proceedings	Annexure I.
17. Views of State Governments in regard to the causes of the delay and remedies	Annexure II.
18. Relevant extracts of Sections 8,10, and 11 of the draft Bill of the Law Commission	Annexure III.



The third term of reference requires us to examine the scheme of acquisition of land with particular reference to the reasons for administrative delays and remedial measures. Complaints about undue delays in the completion of the acquisition proceedings including the total non-payment of compensation for years and years were repeatedly made to us by land owners from all the States. It was pointed out that while the Government is not adversely affected by delay as compensation payable is on the basis of the market value prevailing on the date of the Section 4(1) notification, the land-owners are hard hit because they are not in a position to improve their lands for deriving the benefits from such improvements during the long period which frequently elapses between the Section 4(1) notification and the date of taking possession by the Collector. In effect it became a transaction in which all the advantage went to the State and all the loss was the lot of the landowner and it amounted to an extortion which was given the name of a deal. Moreover, it was emphasized that the delay in payment of compensation adversely affects the land-owner inasmuch as the money which falls into his hands does not possess the same value as it did on the date of the section 4(1) notification. The State Governments, the local bodies and the acquiring authorities have recognised that there is generally inordinate delay in finalising the land acquisition proceedings. In order to give a fair deal to the land owners and also to meet the requirements of the acquiring authorities in a rapidly developing economy, a realistic and purposeful assessment of the causes of the delays becomes relevant. We, therefore, propose to examine the entire process of land acquisition with reference to the scheme of the Act.

Scheme of the Land Acquisition Act, 1894

7.2. Acquisition of land under Land Acquisition Act ordinarily begins with a preliminary inquiry. Government notifies first under Section 4 that 'land in any locality is needed or is likely to be needed' for a public purpose. Public notices are also given. This enables the officers of Government to enter upon lands to survey them and also enables persons interested to object to the acquisition generally and also particularly in accordance with the provisions of Section 5-A of the Act. After the objections have been considered and Government has satisfied itself on the report or reports of the Collector that a particular land is needed, a second notification is issued under Section 6 that a particular land is needed for the public purpose. This declaration is conclusive evidence that the land is so needed and Government then proceeds to acquire the land. The procedure is detailed in the sections that follow. Under Section 9(1) the Collector causes public notices to be given that Government intends to

take possession of the lands and that claim to compensation for all interests in lands shall be made to him. After this proceedings for the fixation of compensation begin. When these proceedings are completed the Collector makes his award about the true area, the compensation to be allowed, and the apportionment of that compensation among persons known or believed to be interested. When the Collector has made his award, Section 16 enables him to take possession of the lands and the lands vest absolutely in Government free from all encumbrances. This is the long procedure under which possession is taken after the award.

7.3. There is a shorter procedure for cases of urgency and it is provided in Section 17. Under this procedure Government in cases of urgency, is enabled *inter alia* to omit the application of Section 5-A and to make a declaration of intended acquisition under Section 6 at any time after the publication of the notification under Section 4(1). Acquisition of land in cases of urgency and emergency stands on a footing different from normal acquisitions. We propose to turn our attention to the same a little later.

Five stages prior to Section 4(7) notification

7.4. There are, broadly, five-stages which have to be completed before any step for the acquisition of land is taken under the Land Acquisition Act. The first step of acquisition begins with the issue of a notification under Section 4. These stages are :—

Stage 1.—Determination of the location and the areas which are considered suitable for acquisition where necessary by investigations and site inspections by the Sitting (Expert) Committee; examination of alternate sites for avoiding acquisition of good agricultural land or land which will take away the main source of livelihood of the agriculturist.

Stage 2.—Demarcation, peg-marking, preparation of plan of the land for the purpose of identification and compilation of data in regard to buildings, standing crops, trees, religious buildings, persons to be displaced, etc.

Stage 3.—Preparation of a preliminary estimates for obtaining administrative approval to the proposals for acquisition.

Stage 4.—Submission of application in the prescribed form with necessary plans and certificates to the competent authority.

Stage 5.—Preliminary scrutiny of the proposal by the Collector and his staff *i.e.* Land Acquisition Officer/Tehsildar/Revenue Inspector/Patwari.

Steps for acquisition under the Act

7.5. After the completion of these preliminaries, the following steps are required to be taken in every case of acquisition under the Land Acquisition Act :—

- (1) A Preliminary notification under Section 4(1).
- (2) Survey and investigation under Section 4(2)
- (3) Filing of objections under Section 5A.
- (4) Hearing of objections and report of the Collector to Government.
- (5) Direction to the Collector to take order for acquisition. (Section 7).
- (6) Preparation of Plan. (Section 8).
- (7) Declaration under Section 6 that land is needed for a public purpose.
- (8) Taking possession of land under Section 16, after the award is made.
- (9) Enquiry & Award by the Collector (Sections 11 to 13).
- (10) Payment of compensation or deposit of the same in court after the award. (Section 31).

Time-limits for certain steps

7.6. A period of 30 days after the issue of the notification under Section 4(1) is prescribed by Section 5A(1) for objecting to the acquisition of the land. The first proviso to Section 6(1) as amended by the Land Acquisition (Amendment and Validation) Act 13 of 1967 enacts that after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, i.e. (after 20-1-1967) no declaration in respect of any land can be made after the expiry of three years from the date of publication of the notification under Section 4(1).

7.7. The Ordinance and the Amendment Act of 1967 referred to above, were enacted with the object of nullifying the effect of the decision of the Supreme Court in *State of Madhya Pradesh vs. Vishnu Prashad Sharma*.¹ This case arose out of proceedings for acquisition of land in eleven villages in Madhya Pradesh for the steel plant at Rourkela. The notification under Section 4(1) of the Act was issued on May 16, 1949. Thereafter, declarations were issued under section 6 from time to time and some lands in a particular village were acquired in the year 1956. In August 1960, a fresh declaration under section 6 of the Act was issued for the acquisition of the land in the same village. A writ petition challenging the validity of the declaration under section 6 was filed. The High Court accepted the writ petition whereupon the State of Madhya Pradesh filed an appeal to the Supreme Court. It was held by the Supreme Court that ss. 4, 5-A and 6 of the Act were integrally connected and that acquisition always began with a notification under section 4(1) followed by consideration of

all objections thereto under section 5-A and a declaration under section 6. It was further held that once a declaration under section 6 was made the notification under section 4(1) was exhausted and the latter section was not a reservoir from which the Government might from time to time draw out land and make declaration with respect to it successively. The ultimate conclusion was that there could be no successive notifications under section 6 with respect to land in a locality specified in one notification under section 4(1) and in the result, the appeal of the State was dismissed.

7.8. The decision of the Supreme Court affected a large number of cases wherein a single notification had been issued followed with more than one declaration under section 6. It was not possible to reopen all such cases and to start proceedings afresh as it would have seriously dislocated projects for which land had been acquired and compensation paid. Consequently, to overcome the adverse effect of the decision of the Supreme Court and in view of the urgency of the situation affecting many important projects, the Land Acquisition Act was amended with retrospective effect by the promulgation of the Land Acquisition (Amendment and Validation) Ordinance on the 20th January, 1967 (latter replaced by Act No. 13 of 1967), which provided that, if necessary, more than one declaration may be issued from time to time under section 5 in respect of different parcels of any land covered by the same notification under section 4(1) irrespective of the fact whether one report or different reports has or have been made under section 5A(2) of the Act. It was further provided with a view to ensuring that the acquisition proceedings do not linger on for undue long time, that after the commencement of the Ordinance (i.e. after 20th January, 1967) no declaration in respect of any land can be made after the expiry of a period of three years from the date of publication of the notification under section 4(1).

7.9. It is pertinent to note that no period is prescribed under the Act for other stages involved in the acquisition, that is to say for making an award, taking of possession by the Collector, and for the payment of compensation, etc.

Measures adopted by States for minimising delays

7.10. The delays in completing land acquisition proceedings have been engaging the attention of the State Governments from time to time. Some of the States like Maharashtra and U.P. have issued departmental instructions prescribing time-limits for the completion of various stages in the Land Acquisition proceedings. Under the instructions issued by the Government of U.P., the officers concerned are required to dispose of the proceedings as early as possible, and the disposal is not to be delayed so as to exceed the aforesaid limits in any case. In cases in which proceedings are delayed beyond the time limit, detailed reports, giving reasons of delay together with the explanations of officers concerned and the relevant data, are required to be submitted

¹.1966(3) SCR 557.

to the Board of Revenue along with the monthly statement prescribed for periodical review to be made by the Board of Revenue in order to take necessary remedial steps. It may be noted that administrative instructions have no force of law, and they provide no more relief than good wishes extended to a sufferer for human considerations is seldom the strong suit of administrative officers.

7.11. None of the State Land Acquisition Acts has prescribed an overall time limit for completion of the proceedings. Some State Governments, have, however, made provisions in their Act providing for time limits for different stages of acquisition.

7.12. The Mysore Act provides that the authorised officer should complete his investigations under Section 4(2) of the Act within a period of three months or within such longer period not exceeding six months. The Mysore Act further provides that the Deputy Commissioner should submit the case for the decision of the Government after hearing of objections and inquiry, if any, under section 5A(2), before the expiry of six weeks from the last date for filing objections or before the expiry of six weeks from the date on which he receives the report under section 4(4), whichever is later. The delay in submitting the report can, however, be condoned by the Government.

7.13. The Rajasthan Land Acquisition Act, 1953, has provided that the Collector should, except for the reasons beyond his control, make an award within a period of three months commencing from the time fixed for appearance of the persons interested before him under Section 9(2).

7.14. With a view to minimise delay, a number of States have amended the Land Acquisition Acts so as to provide for measures other than fixation of time-limits for different stages of acquisition. Such measures include delegation of powers under the provisions of the Act to various authorities viz., powers of Collector to other officers, power to issue notification under section 4(1) to Collector, power to issue declaration under Section 6 to the Commissioner, power to the Collector to make award on the basis of agreement. Some of the States have provided that a copy of the notification under Section 4(1) should be served on all the persons known or believed to be interested in the land.

7.15. Some of the Urban Development Statutes have also made provisions for curtailing delays in the commencement of acquisition proceedings after the coming into force of the development plan, in completing the acquisition of the land, and in making award by the Collector.

7.16. We find that in spite of the fact that some measures have been adopted by the State Governments for expediting land Acquisition Cases, long

delays continue to occur on a very wide and gigantic scale in the matter of finalising the proceedings.

Instances of delay

7.17. Apart from the case of Shri V. P. Sharma (to which a reference has been made above) which discloses a delay of over 11 years in the issue of the declaration under Section 6 after the issue of the notification under Section 4(1), another instance of abnormal delay has been furnished by the Supreme Court case of *Shri Uday Ram Sharma v. Union of India*². The facts of this case are that in November, 1959, a notification under Section 4(1) notifying the land measuring 34,070 acres was issued by the Delhi Administration for a public purpose namely the planned development of Delhi. The first declaration under Section 6 covering some area of land was issued sometime in 1961. Another declaration covering another parcel of land was issued in March, 1966 i.e. after a lapse of over 6 years from the date of issue of notification under Section 4(1). In fact, the actual time taken in completion of the acquisition proceedings would be much more inasmuch as other stages laid down in the Act namely, making the award and the payment of the awarded amount to the persons interested were yet to be completed. The Act does not prescribe any time limit for the completion of these stages.

7.18. The recent case of the State of Gujarat v. Shantilal Mangaldas, which went to the Supreme Court, also discloses the same story of abnormal delay in completion of acquisition proceedings. In this case, the declaration of intention to make a Town Planning Scheme was made on 18-4-1927 under the Bombay Town Planning Act of 1915 and the scheme so commenced continued under the Bombay Town Planning Act, 1954. A plot of respondent's land was acquired under the said scheme but the respondent was informed of the amount of compensation only on 23-8-1957. In other words, there was a delay of 30 years between the declaration of intention to make the scheme and the intimation of the amount of compensation. The argument of the respondent that payment of market-value at a date many years before the date on which the title of the owner is extinguished was unreasonable, was rejected by the court, because the validity of the statute relating to the acquisition could not be questioned on the ground that it offended Article 19(1)(f) of the Constitution. According to the Court, the mere fact that considerable time has elapsed since the declaration of the intention to make a scheme could not be a ground for declaring section 67 of the Bombay Town Planning Act, 1954, which had prescribed the date of the declaration to make scheme as the date for determining the market value of the land acquired, as *ultra vires*. However, in another place, the court

¹ W. P. No. 114 etc. of 1966 decided on 7-2-1968.

² The Supreme Court has since held in the recent case of *R. C. Cooper and another v. Union of India* (Known as *Banks Nationalisation case*) (Write Petitions No. 222, 298 and 300 of 1969 decided on 18th February, 1970) that a citizen may challenge the law relating to acquisition of land under the provision of Art. 19(1)(f) read with clause (5) on the ground that it imposes fetters upon his right to hold property which are not reasonable restrictions in the interest of the general public,

expressed the view that it is perhaps right to say that compensation cases should not be allowed to drag on for a long time because then the compensation paid would have no relevance to the exact point of time when the extinction of the title of the land actually takes place. This case emphasises the need for imposition of reasonable time-limits for completion of the acquisition proceedings.

7.19. Before we proceed further, we would like to refer to the recommendations of the Law Commission, Thacker Committee and Group of Experts who have suggested various measures for tackling the problem of delay.

Recommendations of Law Commission

7.20. The question of delay was examined by the Law Commission in 1958,* by the Thacker Committee on Integration of Urban Housing Schemes and Land Acquisition Proceedings, in 1965 and by the Group of Experts on Land Acquisition in 1967. The following suggestions for curtailing delays in acquisition proceedings emerge from the reports of these three bodies.

Fixing of stage by stage and over-all time limit

7.21. The Law Commission has suggested for the fixation of time limit for each step required to be taken in the acquisition proceedings (see Annexure I) and, further, an over-all time limit for the completion of proceedings by the Land Acquisition Officer. The Commission, however, found that it was not possible to provide for sanction for enforcing the time limit at each stage.

7.22. In their draft Bill, the Law Commission has made a provision for automatic cancellation of the notification under Section 4(1), if the overall time-limits fixed for the two stages of the proceedings for acquisition—namely (a) from the date of notification under Section 4(1) to the date of first hearing fixed by the Collector for an enquiry into the case and (b) from the date of first hearing to the date of the order of the Collector in terms of the agreement (regarding area of land, compensation etc.) or the date of reference to the court, if no such agreement is arrived at between the parties—is not adhered to. The Commission has prescribed an overall time-limit of 8 months, extendable upto 12 months, for the first stage, and 4 months for the second stage. Under the scheme of the Commission, the result of the cancellation of the notification under Section 4(1) will be that the owner shall be entitled to get back possession of the land together with the compensation for deprivation of possession thereof, and damage, if any, done to the land.

Recommendations of the Thacker Committee

7.23. The Thacker Committee apprehended that if a time limit were specified in the Act it would be construed as mandatory and that failure to ad-

here to the time limit would result in the invalidation of the entire proceedings necessitating initiation of fresh proceedings which, would, in turn, create a number of complications and hold up the acquisition of land further. Therefore, they favoured the idea of specifying a time limit in the Rules of a directory nature. They were also of the view that the entire proceedings could be completed within a period of 18 months if adequate staff were employed and efficient supervision exercised over them.*

Recommendation of the Expert Group

7.24. The Expert Group endorsed the view that the entire proceedings should be completed within a specified period which it fixed at 5 years from the date of issue of the notification under Section 4. Instead of specifying time limit in the Act, they favoured the idea of leaving the details for being included in the rules and administrative instructions. However, they suggested that the following provisions as to time-limits may be included in the Act:

- (i) If the draft declaration under section 6 was not published within three years of the date of notification under section 4(1), the preliminary notification should become invalid;
- (ii) if the award is not made within 5 years of the publication of section 4(1) notification, compensation should be antedated on the basis of the market value as on a date 5 years prior to the award, or interest should be paid on the compensation in case the 5 year limit is exceeded.* In computing the period, they suggested, the time spent in litigation should be excluded unless the court rules otherwise.

7.25. In the questionnaire issued by us, information was sought about the causes of delay and suggestions for remedying them. A few cases selected at random were also collected from the State Governments for locating the delays at various stages. The views of the State Governments in regard to the causes of delays and remedies for the removal thereof have been given in the Annexure II.

Analysis of causes of delay

7.26. It is clear from the perusal of the various stages enumerated in para 7.4 that in the first instance the acquiring bodies/Departments have to visit the site to make some sort of demarcations for preparing an application for the acquisition of land to the competent authorities. The Collector and/or his lower staff again visits the site for making a preliminary enquiry to check in a general way the accuracy etc. of the proposal. This is followed by another visit to site for determining the availability/suitability of the land or the purpose for which it is to be acquired. One more visit is made at the stage of holding enquiries and for preparing the date which is to be included in the declaration under Section 6. A somewhat similar procedure is

*The Second State Conference of the Ministers for Town and Country Planning, 1961 have followed the suggestions of the Law Commission in this regard in their draft Bill for acquisition of land for town planning purposes.

4. Para 2-6 page 7-8 of the Report.

5. Page 13 of the Report para 5-09.

to be followed in the preparation of preliminary estimates of the cost of the land. The requiring bodies/Departments first make the preliminary estimate of the cost. The Collector has also to prepare a preliminary estimate of the cost before the issue of notification under section 4(1). Before making the award the Collector has to make a reference to the concerned authority for acceptance of the amount of compensation determined by him. Sometimes a reference is also required to be made for obtaining supplementary information before making the award and also in cases where acquisition proceedings are to be withdrawn in part or full. We are of the opinion that lack of coordination among the concerned authorities viz. Acquiring Authorities/Departments, the appropriate Government and the Collector and his staff, is the most offending feature of the land acquisition process in almost all its stages. The primary and dominant cause of delay arises from the inadequacy of arrangements to secure essential coordination.

Our approach to the Problem

7.27. We feel that in dealing with the cause of delays, the remedies should be based on a balanced approach for securing the following essential aims:

- (a) The complex process of land acquisition should be designed on the basis of effective pre-planning.
- (b) The legitimate interest of the persons interested should be given due protection.
- (c) The Government should be empowered to acquire land with reasonable speed for its projects of social welfare and economic development and for implementing measures required for dealing with emergencies and calamities.
- (d) A reasonable over-all time limit should be prescribed under the Act which should ensure that the land acquisition proceedings are finalised without undue delay.

7.28. We are of the view that the effectiveness of a land acquisition procedure would depend on the adequacy of pre-planning. To be effective, the pre-planning stage should—

- (a) ensure correct selection of land ;
- (b) ensure that excessive land is not acquired and that good agricultural land or land which takes away occupation of the owners is acquired to the minimum extent possible ;
- (c) prepare data required for proposals for rehabilitation where necessary ;
- (d) exhaustively demarcate, measure and collect data in regard to the persons interested ;
- (e) collect comprehensive data in regard to soil classification, etc. and other information for determining compensation and for obtaining administrative approval for an estimate on a fairly firm basis.
- (f) and above all making a human approach to the question of determining compensation and

not abusing one's power in one's own favour and forcing a deal on one's own terms.

To achieve the objects listed above, we feel that a distinction should be drawn between the normal cases of acquisition—cases for which only a small pocket of land is acquired for public purpose like setting up of post office, construction of road and hospital etc. and projects for which large tracts of land are acquired as for example setting up of a new town, the construction of a big dam, schemes of town planning and town improvement etc. In our opinion, the term big project may be defined to mean the project for which it is proposed to acquire land covering an area of not less than 100 acres. In case of acquisition of land for big projects, the appropriate Government should issue a project notification specifying the project area as soon as it decides to acquire land for the purpose. The project notification should be valid for a period of two years within which the appropriate Government should issue a notification under Section 4(1) of the Land Acquisition Act. In case no such notification is issued within the period so specified the land in question should be deemed to be free from all the restrictions of acquisition proceedings.

7.29. In our opinion, the distinction between the two types of acquisition, would, serve a dual purpose. In the first place it will give sufficient time to the acquiring authority for planning and survey of the area etc. and secondly it will check speculative rise in land prices in as much as the speculative rise in land price takes place after the intention of the acquiring authority becomes known to the public and there is a big time lag between the expression of this intention and the first notification under section 4(1).

7.30. In order that survey and measurements etc. can be undertaken in the case of big projects after issue of the project notification, it is imperative that a provision should be made in the Act authorising the Collector to undertake preliminary survey etc.

Sections 3A and 3B of the Bombay Amendment Act

7.31. In this connection, we have considered the amendments introduced by the Land Acquisition Bombay Amendment Act, 1945, introducing Part I-A, entitled 'preliminary survey' consisting of sections 3-A and 3-B. These amendments form part of the Land Acquisition Act as in force in Maharashtra and Gujarat. Sections 3-A has been further amended by the Land Acquisition (Gujarat Unification and Amendment) Act, 1963. The extracts of the provisions of Section 3-A and 3-B as in force in these two States will be found in the Appendix giving a comparative Analysis of State Amendments to the Land Acquisition Act.

7.32. We think that the provisions of Section 3-A and 3-B as framed in these States should be adopted subject to necessary safeguards for protecting the interests of the persons interested in the land so that there may not be an abuse of power on the part of the Collector or the officers who enter upon the land in connection with a preliminary survey.

Our Recommendations

7.33. We, therefore, recommend that provision may be made for a preliminary survey of land before the issue of notification under Section 4 for the purpose of enabling the Government to determine whether the land in any locality is needed or is likely to be needed for any public purpose. The Collector should issue a notification for making a preliminary survey whereupon it would be lawful for an officer of the Government and his servant and workmen having written authority of the Collector to undertake the following operations :

1. to enter upon and survey and take levels of any land in such locality;
2. to dig or bore into the sub-soil;
3. to do all other acts necessary to ascertain whether the land is suitable for such purpose;
to set out the boundaries of the land likely to be needed and intended line of work, (if any), likely to be done thereon;
5. to mark such levels, boundaries, and line by placing marks and cutting trenches;
6. to measure the land so likely to be needed; and
7. where otherwise the survey cannot be completed and the levels taken or the boundaries or lines marked to cut down and clear away any part of any standing crop, fence or jungle.

7.34. However, no person, should enter any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least 7 days' notice in writing of his intention to do so.

7.35. In cases where it is necessary to dig or bore wells into sub-soil or where it becomes necessary to cut down and clear away any part of any standing crop, fence or jungle, there should be a clear direction given by the Collector in the authority given to the officials.

7.36. The main reasons which influenced the Law Commission in rejecting the adoption of Section 3-A and 3-B of the Bombay Amendment Act, 1945, were that it would be unjust to permit the officers of Government to enter upon private land without a notification conferring authority for that purpose and that the general authority to enter on another's land in the locality would not be reasonable. The Commission thought that such a general authority would result in considerable inconvenience to the owner of the land if the officers were permitted to enter and make investigations on the land without prior intimation.* Under this scheme, we have attempted to remove these objections by specifically providing that the Collector should issue a notification for making a preliminary survey before the entry of officers on the land and that the officer should not enter upon such land unless they have

a written authority of the Collector to undertake the operations relating to the preliminary survey. We would like to add that under our scheme, it would not be possible for the appropriate Government to issue the notification under Section 4(1) within the prescribed period of two years (after the issue of the project notification) in cases of acquisition for big projects unless preliminary survey is undertaken prior to the investigation under Section 4(2). We shall like to make it clear that though the provision in regard to the preliminary survey should normally be made use of in cases of acquisition for big projects, we do not wish to restrict the applicability of this provision to such cases of acquisition only. We feel that such a provision would give sufficient time to the appropriate Government to make up its mind in regard to acquisition prior to the issue of the notification under Section 4(1) even in normal cases of acquisition.

7.37. We find that provision in regard to survey of land is also made in Section 4(2) and Section 8 of the Act. Section 4(2) of the Act provides for survey and measurement of land etc. Section 8 of the Act also provides that the land should be marked out, if not already done, and measured and a plan of the same made. We feel that provisions of Section 8 are unnecessary and the measurement and making of a plan etc. should be done while carrying out survey etc. under section 4(2). We recommend that the scope of Section 4 may be enlarged. The notification which is to be issued under Section 4(1) should be broadbased to include description of the land by its survey number, if any, and also by its boundaries and its approximate area. The copy of the notification should be served on the owner, and where the owner is not the occupier also on the occupier of the land. The public notice of such notification should also be given in the case of land situated in a village in the office of the village panchayat within whose jurisdiction the land lies. The notification should also specify the date, (such date not being less than 21 days from the date of the notification), on or before which and the manner in which objections to the proposed acquisition can be made. A provision may also be made in Section 4 that the land should be measured and a plan made and the names of persons interested also collected.

7.38. Section 5 of the Act provides that the authorised officer shall at the time of entry pay or tender payment for all necessary damage to be done as a result of survey and other operations to be carried on under Section 4(2). We have suggested a provision for making a preliminary survey before the issue of a notification under Section 4. Under the existing provisions, the decision about the adequacy of damages payable is to be taken by the Collector or other Chief Revenue Officer of the District and such decision is final.

7.39. Under Section 5 of the Land Acquisition Act, disputes as to sufficiency of the amount paid or tendered at the time of entry on the land for a

* Page 34 of the Tenth Report of the Law Commission on the Law of Acquisition and Requisitioning of land.

preliminary investigation under Section 4(2) are required to be referred by the officer concerned to the decision of the Collector or other Chief Revenue Officer of the district and his decision is final. In our view, all disputes as to the sufficiency of the amount of compensation in regard to the damage done to the land whether during the course of the preliminary survey prior to the issue of Section 4(1) notification or during the course of the preliminary investigation under Section 4(2) after the issue of the said notification should be settled by the Court and not by the Collector. This is in accordance with our general recommendation that all disputes under the Land Acquisition Act should be settled by a judicial forum and not by an executive authority.

7.40. Section 5-A of the Act envisages that persons interested should file objections against the acquisition of the land within 30 days after issue of notification under Section 4. Section 5A(2) lays down that the Collector shall give the objector an opportunity of being heard either in person or by pleader. It has been further laid down that the Collector shall make a report to the appropriate Government containing his recommendations on the objections together with the record of the proceedings held by him. It was represented to us that, by and large, small land owners or tenants and other persons interested are neither conversant with the implications of the acquisition of land, nor are they generally in a position to engage a pleader to represent their case adequately. We accordingly recommend that the person interested should be allowed to be represented by a representative of his choice who need not necessarily be an advocate. We further recommend that a comprehensive report inclusive of all the data relating to the investigation, survey, measurements and plan which should be completed under Section 4(2) should be forwarded to the appropriate Government by the Collector for a decision that the land is needed for a public purpose. A copy of the report of the Collector should be supplied free of cost to the persons interested.

7.41. The Act does not provide for any representation by a party to the Government against the report to the Collector justifying acquisition of land for a specific public purpose. We feel another opportunity should be given to the persons interested to present their cases before the appropriate Government against the recommendations of the Collector. The Law Commission have also recommended that the persons interested should issue declaration under Section 6 after giving an opportunity to the objectors. We also recommend that an opportunity to represent the case to the Government against the report of the Collector may be given to the objectors and that the objectors should be allowed to plead their case by a representative of their choice, who may not be an advocate.

7.42. Section 6 of the Act lays down that the appropriate Govt. should, after considering the report of the Collector and objections made thereto issue a declaration that the land is required for a public purpose. We recommend that the declaration *inter alia* should specify the land with its precise boundaries and survey number, if any, its area and the place where the plan of the land could be inspected and the public purpose for which the land is needed in clear specific and unambiguous terms. In this context, we considered the provisions of the Section 8 of the draft Bill of the Law Commission which corresponds to Section 6 of the Act and recommend that provisions contained in sub-sections (1), (3) and (6) of Section 8¹ of the Draft Bill of the Law Commission may be adopted except in so far as they lay down the time limits.

7.43. Section 6 of the Act further provides for the issue of different declarations from time to time in respect of different parcels of any land covered by the same notification under Section 4(1). We are separately providing for an overall time limit for completion of acquisition proceedings from the date of issue of notification under Section 4 upto the date of reference to the court. We are, also, stipulating that in case the overall limit is not adhered to, the appropriate Government shall have to issue a fresh notification under Section 4. We do not wish to restrict the issue of number of declarations under Section 6 provided the overall time limit prescribed by us is adhered to.

7.44. Section 9 of the Act lays down that the Collector shall issue notice to the persons interested to appear before him and present their case in regard to the following :—

- (a) the nature of interest in land.
- (b) amount and particulars of claim to compensation for such interest; and
- (c) objections, if any, to the measurements of land.

Section 10 of the Act empowers the Collector to enforce the making of statements as to the names and interest to whom notices have been served. We have considered Sections* 10 and 11 of the draft Bill of the Law Commission which corresponds to these Sections and recommend that the former may be adopted in so far as they accord with our scheme. Some slight modifications have been suggested by the Commission in Sections 9 and 10 of the Act with which we agree.

Taking of possession and payment of Compensation

7.45. Under the existing law, the Collector may take possession of the land after the award and thereupon the land vests absolutely in the Government free from all encumbrances². In cases of

¹. Extracts contained in Annexure III.

². S. 16 of the Land Acquisition Act.

*Extracts contained in Annexure III.

urgency/emergency, however, possession can be taken even before the award.⁹ On making an award, the Collector is required to tender payment of the compensation to the persons interested entitled thereto according to the award and pay it to them unless prevented by certain contingencies.¹⁰

7.46. Under the scheme of the Law Commission, the Collector is empowered to take possession of the land within a specified period from the date of the declaration that the land is required for a public purpose.¹¹ In our view, it is not desirable to allow the Collector to take possession of the land without an offer of the estimated amount of compensation due to the person interested. The procedure prescribed in Sections 10, 11 and 12 of the draft Bill of the Law Commission which we have adopted should be followed by the Collector before making possession of the land.

7.47. The consideration which has weighed with us in making the above recommendation is that in the case of voluntary transactions of sale of land, the payment of the price and the parting of possession are simultaneous acts. There is no reason why this normal practice should be departed from in cases of compulsory purchase of the land by the State. Another reason which has prompted us to make the payment of the estimated amount of compensation a condition precedent to the taking of possession is the consideration which has been very well brought out in the observation of the Supreme Court in a recent case¹² that if compensation cases are allowed to drag on for a long time, the compensation paid would have no relevance to the exact point of time when the extinction of the title of the land actually takes place. We, therefore, recommend that except in cases of emergency, the Collector should, within one month from the date of the agreement, tender payment of the amount of compensation to the persons interested entitled thereto according to the agreement and should pay it to them. In case where no agreement is arrived at between the Collector and the person interested, the estimated amount of compensation should be paid by the Collector to the persons interested entitled thereto. In case where the agreed or the estimated amount of compensation tendered by the Collector is not accepted by the person interested entitled thereto, the same shall be deposited in the court. If there is no person competent to alienate land or if there be any dispute to the title to the compensation or to the apportionment of it, the Collector should deposit the estimated amount of compensation in the Court and give notice of such deposit to the persons interested entitled to the amount.

7.48. We would like to add that in cases where there is no agreement between the parties as to the amount of compensation the acceptance of the estimated amount of compensation should be without prejudice to the right of the party to claim the proper amount of compensation in the Court. We, however, recommend that the Collector should not take possession of any land without giving reasonable notice to the person interested in the land. Such a provision would enable them to remove their property from the land without unnecessary inconvenience.

Fixing of Time Limits

7.49. We have received various suggestions from the State Governments/organisations and the private individuals etc. who appeared before us and gave evidence as well as in the replies to the questionnaire circulated by us in regard to fixing up of the time limits for speedy completion of acquisition proceedings. These suggestions relate to the fixing of time limits between the date of issue of the notification under Section 4(1) and declaration under Section 6, and between the date of declaration and the date of the award. It was also suggested that there should be a time limit for each stage as well as an overall time limit for the completion of proceedings as has been recommended by the Law Commission. Another suggestion relates to fixing of an overall time limit without prescribing any time limit for different stages. We have already referred to the recommendations of the Law Commission, Thacker Committee and the Group of Experts on the subject. The Law Commission have fixed a maximum time limit for completion of each stage of acquisition proceedings. They have further laid down an overall time limit of 12 months which is extendable to 16 months from the date of the issue of notification under Section 4 up to the date of reference to the court. We feel that the time limit for each stage of acquisition if stipulated in the Act should be of a mandatory nature as otherwise no useful purpose could be served in incorporating the same in the Act. However, in case these are made mandatory and any of the time limits is not adhered to, the entire land acquisition proceedings would be invalidated requiring the issue of a notification under section 4(1) *de novo*. We are of the opinion that in case time limit for each stage of proceedings is prescribed, it will defeat the very purpose for which it is stipulated namely, expeditious completion of proceedings. We accordingly suggest that only an overall time limit from the date of issue of notification under Section 4(1) up to the date of reference to the Court may be prescribed.

⁹. S. 17 *Ibid*.

¹⁰. S. 31 *Ibid*.

¹¹. S. 8(4) of the draft Bill of the Law Commission (p. 60 of the Report).

The Thacker Committee endorsed the view of the Law Commission for empowering the Government to take immediate possession of land after declaration only for the purpose of acquisition for housing schemes in and around growing towns and cities, but not in rural areas (see para 2.7 and 2.8 pp. 8 and 9 of the Report of the Committee).

¹². State of Gujarat v. Shantilal Mangaldas, *Ibid*.

7.50. We consider that a period of 12 months from the date of issue of notification under Section 4(1) up to the date of reference to the court should be sufficient to complete the proceedings in normal cases of acquisition. There may be some cases in which it may not be possible to complete the proceedings within this period. In such cases the period of 12 months may be extended by another 3 months if there are good reasons to be recorded in writing. In the case of acquisition of land for big projects we have already recommended that a project notification may be issued as soon as the appropriate Government decides to acquire the land for the purpose and that such a notification should be valid for a period of two years within which notification under Section 4(1) may be issued. We are of the view that an overall period of 12 months should also be sufficient in such cases for completing proceedings from the issue of notification under Section 4(1) up to the date of reference to the Court. However, in cases where it is not possible to complete the proceedings within this period it may be extended by another six months, if there are good reasons to be recorded in writing. We are aware that in many cases much time is spent in litigation in the courts. We accordingly recommend that the time taken in litigation during the prescribed time limit should not be taken into account for computing the aforesaid time limits unless the Court, for sufficient reasons, rules it otherwise.

7.51. We are of the view that an overall time-limit for completion of the acquisition proceedings would have no meaning unless there is a sanction for the enforcement of the same. If within the time specified under our scheme, the land acquisition proceedings are not completed up to the stage of the order of the Collector in terms of the Agreement or a reference to the Court (in case no such agreement is arrived at), the notification under Section 4(1) should stand cancelled and the persons interested in the land should be entitled to apply to the court for an order against the Collector for restoration of the possession in accordance with their respective interests and payment of such compensation as the court may determine in respect of the damage done and if possession of the land has been taken by the Collector be entitled to apply to the court. The occasion for applying for an order for restoration of the possession would arise under our scheme only in cases of emergency acquisitions. The result of the cancellation of the notification under Section 4(1) will be that the Government will have to issue a fresh notification in Section 4(1) in which case the person interested will be entitled to compensation on the basis of market value as on the date of such fresh notification.

7.52. It was represented to us by the officials that it would not be practicable to complete the proceedings within the time limit stipulated by us as a huge amount of work is involved in planning, determining the location, settling the actual site, measuring, peg-marking, preparing the plan of the land, making an estimate of the cost of land, etc., and in the scrutiny of the proposal at various stages by different officers. We do not agree with this view.

The Government has vast resources at its disposal and it should not be difficult for it to speed up its work so as to complete the proceedings within the period prescribed by us. It may be recalled that in the case of acquisition of land for big projects, we have allowed the acquiring authority an overall period of 3½ years (2 years from the date of issue of the project notification up to the date of notification under Section 4(1) and thereafter a period of 1½ years) for completing the acquisition proceedings up to the stage of agreement/reference to the court.

7.53. There are various steps that may be taken up for streamlining the process of acquisition. We feel that the Revenue Department of the State Government which is concerned with the subject of land, its classification, settlement, land records (jama-bandi, mutation register etc.) should be the appropriate department which can be entrusted with the task of formulation of policy in regard to land acquisition. It can also provide coordinative and initiation and exercise supervision and control. We feel that the Revenue Department is certainly in a position to have an objective approach to the land acquisition particularly because acquisition is made by this department mostly for other departments, as most of the cases of acquisition would emanate from other departments of the Government. We suggest that land acquisition cells should be set up at the Tehsil, District and State levels which should collect necessary data from the Revenue Department as well as from the offices of the Sub-Registrar. The cell at the State level should preferably be under the charge of a trained Valuation Officer. We feel that whole time staff should be appointed for land acquisition work for expediting the various stages involved in acquisition. Suitable training courses may be designed for training the staff in regard to surveys, measurement, valuation of land etc., if considered necessary.

Directorate of Land Acquisition

7.54. We recommend that a Directorate of Land Acquisition under the charge of the Member, Board of Revenue with high Secretariat status should be set up and he should be made responsible for the speedy completion of all land acquisition proceedings in the entire State. In order that the Directorate of Land Acquisition discharges its functions effectively, we feel that a regular system of bi-monthly review at the state level and monthly reviews of progress and correction of necessary data at the level of Collector/Land Acquisition Officer should be introduced.

7.55. The above suggestions which are only illustrative, have been made by way of focussing attention of the State Governments to some of the basic factors which play an important part in the long process of land acquisition and if a ready digest of such necessary information is kept at the levels proposed by us they, in our opinion, will streamline the whole process and will go a long way in reducing the inordinate delay in completing the acquisition proceedings. These are certainly not

intended to fetter the discretion of the State Governments in adopting other suitable measures, for streamlining the working of the Land Acquisition Act.

Conclusion

7.56. In the end, we would like to point out that the suggestions made by us would go a long way in expediting the process of land acquisition and meet the objections set out in para. 7.26. One of the objects emphasised by us was that there should be effective pre-planning for minimising the delay. Pre-planning is mostly necessary in cases of acquisition of land for big projects. We have suggested that a project notification which should remain valid for a period of two years should be issued in order to enable the State Governments to complete the preliminaries in the case of acquisition of land for big projects. With a view to protecting the rights of the persons interested in the land, we have suggested that in case the notification under Section 4(1) is not issued within a period of two years from the date of the project notification, the land covered by the project notification should be free from all the handicaps and restrictions imposed by acquisition proceedings. We have further suggested certain safeguards against the abuse of power by the Collector and his officers in connection with

the preliminary survey which has to be made after the issue of the project notification. Under our scheme, copies of notification under Section 4(1) are also required to be served individually on all the persons interested and the declaration under Section 6 is required to specify *inter-alia* the description of the land with its precise boundaries, survey number, and area. These provisions would enable the persons interested to present their objections against the acquisition in an effective manner.

7.57. With a view to enable the Government to acquire land with reasonable speed, we have recommended that measurement of land and the preparation of the plan of the land should be completed at the stage of the preliminary investigation under Section 4(2) itself. We have, therefore, suggested the deletion of Section 8 which envisages that the land should be marked out, measured out and planned for declaration and taking of the order for acquisition.

7.58. Overall time-limits have been prescribed by us for completion of proceedings for acquisition of land for big projects as well as small cases of acquisition. In order to enable the State Governments to complete the acquisition proceedings within the prescribed time limits, we have also suggested the setting up of a Directorate of Land Acquisition.



ANNEXURE I

(Ref. Para 7.21)

Scheme of the Law Commission laying down time limits for each stage of acquisition proceeding

<i>Stage of proceeding</i>	<i>Maximum time limit for completion</i>
(i) Preliminary notification under Section 4(1).	
(ii) Survey and investigation under Section 4(2).	3 months which may be extended to 6 months from (i) above .
(iii) Filling of objections under Section 5A.	1 month from (i) above.
(iv) Hearing of objections and report of the Collector to Government.	1½ months from (iii) above or ½ month from (ii) above, whichever is later.
(v) Order to the Collector to prepare a plan (Section 7).	1½ months from (iv) above.
(vi) Preparation of Plan (Section 8).	2 months from (v) above.
(vii) Declaration under Section 6 that land is needed for a public purpose.	1 month from (vi) above.
(viii) Taking possession of land under Section 16, after the agreement/offer of compensation is made.	2 months, which may be extended to four months, from (vii) above.
(ix) Notice, enquiry and offer of compensation by the Collector (Sections 11 to 13).	12 months, which may be extended to 16 months, in all from (i) above.



ANNEXURE II

(Ref. para 7.25 of the report)

Views of the State Government in regard to the causes of the delay and remedies

<i>Causes of delay</i>	<i>Remedy suggested</i>
Andhra Pradesh	
There is no defect in the procedure provided in the Act. The delay is mainly due to administrative reasons.	The State Government have issued administrative instructions for minimising delays and consider them adequate to obviate serious delays in the acquisition proceedings.
Assam	
Delay is due to lack of adequate staff and proper supervision rather than any defect in the procedure.	(i) The declaration under Sec. 6 of the Land Acquisition Act that the land is required for public purpose should be taken as direction to the Collector to take order for the acquisition of land. No separate direction to the Collector under Sec. 7 by the appropriate Government in this regard is necessary. Sec. 7 may be deleted. (ii) The land should be demarcated and its map prepared even before the issue of notification under Sec. 4.
Bihar	
The reasons for delay mainly are administrative inaction and lack of proper supervision by the Collector. Interested political interference also leads to delay.	(i) The time limit for different stages of acquisition should be fixed and strictly adhered to. (ii) The acquiring authority should complete their formalities and file requisition along with administrative approval accorded. (iii) A machinery may be evolved whereby prices of all categories of land are fixed before hand and the award for compensation is compiled on basis of these figures. It is reported that this system was experimented in Mayurakshi project.
Gujarat	
(i) Inappropriate selection of site by the acquiring authorities;	(i) Demarcation of land and joint measurement may be made even before the issue of preliminary notification under Sec. 4.
(ii) Delay on account of joint measurement by dilatory tactics adopted by persons interested ;	(ii) Opportunity of being heard under Sec. 5A should be given to those objectors who specifically demand hearing in person or by their representative while submitting their objections.
(iii) Lack of interest in the acquiring bodies in the land acquisition proceedings after the proposal is submitted;	(iii) An overall time limit for completion of entire process should be prescribed in the Act to ensure curtailment of delays between the issue of notification under Sec. 4 and acquisition of land and in payment of compensation which would also thus represent fair value.
(iv) Time taken in giving the objector opportunity of being heard either in person or by pleader;	In each State one Centralised Agency should be constituted for acquiring land for different departments, who will scrutinise the demand of each department and process the acquisition of land proceedings in accordance with the procedure prescribed under the Act. This centralised agency should be made responsible for the acquisition of land as well as payment of compensation to the land owner within six months from the date of obtaining the possession of the land.
(v) Hearing of claims;	
(vi) Making of award;	
(vii) Litigation in Court.	
Kerala	
Some administrative laxity or lapses viz., time taken for (i) elaborate survey operations and (ii) for preparation or evaluation statement, obstacles created by litigations etc. elaborate procedure and formalities laid down by the Act and rules; concentration of power at higher levels; non-provision of funds or indecision on the part of requisitioning departments especially local bodies; are the important reasons for delay.	(i) Delay can be reduced by fixing statutory and overall time limits; decentralisation of powers and functions; by abridging the procedure to the extent possible and also by employing senior and best available staff for the land acquisition work; (ii) the question of abridging the procedure under Land Acquisition Act without offending the Constitution and the principles of natural justice may be considered

Causes of delay	Remedy Suggested
Madhya Pradesh—	
The delay is generally due to administrative inaction, lack of adequate staff and proper supervision.	No change in the Law appears to be necessary. The State Government have not given any suggestion for shortening the delay.
Maharashtra—	
	It will be necessary to give minimum adjournment not exceeding three in land acquisition proceedings. In genuine and exceptional cases one or two additional adjournments may be given. This procedure would also apply to acquiring bodies who are called upon to give their remarks and tender evidence before the Land Acquisition Officer.
Mysore—	
(i) Delay in publication of statutory notification; (ii) Delay in obtaining survey record, evolution statement from technical department. (iii) Delay in enquiry under Sec. 5A and the determination of award on account of frequent adjournments. (iv) Delay in depositing the amount of compensation by the acquiring body; (v) Administrative reasons.	The draft notification should be printed locally to avoid delay in publication in the Government Press and the locally printed notification should be sent to the Government Press for incorporation in the Weekly Gazette on the State Government.
Orissa—	
(i) Delay is due to administrative reasons and increase in the volume of land acquisition rather than any inherent defect in the Land Acquisition Act. (ii) Some times administrative departments acquiring land do not assess their requirements on a realistic basis and withdraw their demand for acquisition of land. (iii) Certain departments demand huge areas of lands without proper phasing and provision of funds. (iv) Some times advance possession of the land is taken in public interest without the knowledge of the Revenue Department. (v) Delay in issue of notification and declaration in Government Press is due to preoccupations.	An estimate of actual requirement of land should be made on a realistic and rigid basis. There should be a separate Government Press or Cell to handle notification and declaration relating to land acquisition. (ii) Collector can submit the cases direct to the Administration Department and the Revenue Department without routing them through the Revenue Commissioner.
Punjab—	
(i) Administrative inaction rather than any inherent defect in the Act is responsible for great deal of delay. (ii) Lack of efficient staff and proper supervision also contributes towards delay.	No change in law is called for. The State Government have not given any suggestion for remedying the procedure.
Rajasthan—	
Undue time taken in hearing of objections	(i) Land Acquisition Officer should have his own field staff. (ii) Notification under Secs. 4 and 6 should be published in the Gazette extraordinary and simultaneously published in local and other leading newspapers. (iii) Objection under Secs. 5A must be heard and decided within one month of their receipt. (iv) The objector should not be given right of hearing if he fails to appear along with the complete evidence on the date fixed.

*Causes of delay**Remedy Suggested***Uttar Pradesh—**

Failure to lay down time-limit by the Act is responsible for inordinate delay occurring in the finalisation of the proceedings.

Time-limit for the completion of the acquisition proceedings should be laid down in the Act, instead of making rigid time table for each stage of acquisition proceedings overall time-limit for completion of entire proceedings from the date of preliminary notifications under Sec. 4 to the date of taking of the possession of the land after the award is made, should be laid down in the Act. A time limit of five years has been suggested by the State Government for the purpose.

West Bengal—

The causes of delay are mainly of administrative rather than any inherent defect in the law.

- (i) Delays can be eliminated to a great extent by providing efficient staff and by enforcing measure for supervision of the proceedings.
- (ii) An acquisitions department should assist the Collector by furnishing accurate plan of the land to be acquired and other relevant data required in the proceedings.
- (iii) Suitable administrative measures can shorten and remove delays in various stages of proceedings.



ANNEXURE III

Relevant Extracts of Sections 8, 10 and 11 of the draft Bill of the Law Commission

(Ref. Paras—7.42 & 7.44)

Section 8—Declaration that land is required for a public purpose

- (1) If the appropriate Government is satisfied—
 - (a) that the land is needed for a public purpose; and
 - (b) that it is suitable for the purpose for which it is intended to be acquired;

it shall, within six weeks from the date of receipt of the report of the Collector under sub-section (2) of section 6, direct the Collector to proceed under sub-section (2).

(3) The appropriate Government shall then, within one month from the receipt of the report of the Collector under sub-section (2), make a declaration that the land is needed for a public purpose. The declaration shall be published in the Official Gazette and shall specify—

- (i) the land with its precise boundaries, and survey number, (if any) its approximate area, and the place where a plan of the land may be inspected; and
- (ii) the public purpose for which the land is needed.

(6) If the appropriate Government decides to abandon the acquisition of the land, it shall issue a notification to the effect and cancel the notification issued under sub-section (1) of section 4.

Section 10—Notice to persons interested

(1) When the declaration under section 8 is published, the Collector shall.....cause public notice to be given.....stating that.....claims to compensation for all interests in such land shall be made to him.

(2) Such notice shall state the particulars of the land acquired, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature

of their respective interests in the land.....the amount and particulars of their claims to compensation for such interests, the basis on which the compensation so claimed is computed.....their objections, if any, to the area as specified in the declaration, and such other matters as may be prescribed.

(3) The statements shall be made in writing in the prescribed form and shall be signed by the party or his agent.

(4) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situated. Such notice shall be served at least fifteen days before the date on which the persons concerned are to appear and state their respective interests before the Collector.

(5) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by registered post in a letter addressed to him at his last known residence, address or place of business.

Section 11.—Power to require and enforce the making of statements as to names and interests

(1) The Collector may also by notice require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the service of the notice, a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 10 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.



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129

INDEX

	PARAS. No.
1. Some typical cases	8.13.
(a) Sitaram v. State of Maharashtra	8.14.
(b) Gopal Singh v. State of Rajasthan	8.15 to 8.16.
(c) Case from Madras	8.17 to 8.19.
2. Recommendations of the Law Commission	8.20 to 8.22.
3. Our Recommendation	8.23 to 8.26.



Scope of Special Powers for Acquisition of Land in cases of urgency/emergency

One of the issues for our determination is what special powers should be vested in the Government for speedy acquisition of land in cases of Urgency or Emergency having regard to the interest of the State as well as the person interested in the land. A brief review of the existing position of the law would be helpful in understanding and appreciating our recommendations on the subject.

8.2. While Section 16 of the Land Acquisition Act empowers the Collector to take possession of the land after the award, Section 17 deals with taking possession of land by the Collector before the award in cases of urgency. Urgency is of two kinds namely :—

- (1) as per Section 17(1) where the taking of possession may be delayed by at least 15 days from the date of the publication of the general notice mentioned in Section 9(1).
- (2) As per Section 17(2) where unforeseen emergency necessitates immediate possession after publication of notice.

8.3. The direction to the Collector to take possession is required to be issued by the appropriate Government. Taking possession should be followed by the procedure leading to award and payment of compensation. For the period between the taking of possession and the date of making payment or deposit under Section 31(2), interest is required to be paid at the rate of six per cent. (*vide* Section 34).

8.4. Where Sections 17(1) and (2) apply, the appropriate Government is empowered to declare that Section 5-A relating to hearing of objections, shall not apply. It may direct declaration to be made under Section 6 in respect of the land at any time after Section 4(1) notification.

8.5. Clause (1) of Section 17 refers to acquisition of only waste or arable lands while Clause (2) refers to all kinds of lands. In cases of sudden change of navigable river or other emergency, it may be necessary for the Railway Administration to acquire and take possession of any land immediately under Section 17(2). The purpose may be maintenance of traffic, making on the land a river-side or ghat station, or of providing convenient connection with or access to any such station.

8.6. Under Section 17(1) the condition precedent for the exercise of the power is that lands must be arable and waste lands. There is no definition of the word 'arable' in the Land Acquisition Act. Local amendments in some of the States include garden lands in the expression.

8.7. Now lands are of different kinds : there is waste-land, desert-land, pasture-land, meadow-land, grass-land, wood-land, marshy-land, hilly-land etc. and arable land. The Oxford Dictionary gives the meaning of 'arable' as capable of being ploughed; fit for tillage, opposed to pasture-land or wood-land and gives the root as arabilis in Latin. Waste-land comes from the Latin vastitas or vastus (empty, desolate, without trees or grass or buildings). It was always usual to contrast vastus with incoltus (uncultivated) as in the phrase 'to lay waste' (agri-vastate). The expression 'waste land' as contrasted to arable land would, therefore, mean land which is unfit for cultivation or habitation, desolate and barren land with little or no vegetation thereof. The expression 'waste land' does not therefore apply to forest land.¹ It will also be seen that under Section 17(1) or Section 17(4) an order can only be passed with respect to waste or arable land and it cannot be passed with respect to land which is not waste or arable land and on which buildings stand.²

8.8. By arable land is meant not only land capable of cultivation but also actually cultivated. Indeed, the fact that the land is actually cultivated demonstrates its nature as arable land.³

8.9. In some of the State Land Acquisition Acts, Section 17(1) has been amended by deleting the words 'waste or arable' with the result that any land could be taken possession of under this sub-section, and in some other State Acts the scope of the expression 'any waste or arable land' has been enlarged to include therein garden, forest and Orchard lands etc. The amendments made in the State Acts are summarised in App. No. 12 (Comparative Analysis of State Amendments to the Land Acquisition Act).

8.10. The question whether an urgency exists or not is a matter solely for the determination of the Government and it is not a matter for Judicial review⁴ and it is not open to the Courts to make a scrutiny of the propriety of the Government's

¹ Raja Anand v. State of U.P., A.I.R. 1967 S.C. 1081.

² Nandeshwar Prasad v. U.P. Government, A.I.R. 1964 S.C. 1217-1218.

³ Ishwarlal v. State of Gujarat (Hidayatullah, C.J.), A.I.R. 1968, S.C. 870 (Page 879).

⁴ Murarilal Gupta v. State of Punjab, ILR (1966) 1 Punjab 411, AIR 1966 Punj 59; Istikhar Ahmad v. State of Madhya Pradesh, AIR 1961 M.P. 140, Mrs. R. D. Chand v. State of Andhra Pradesh, AIR 1963 A.P. 883. Gopal Singh v. State of Rajasthan, AIR 1964 Raj. 270.

subjective satisfaction on an objective appraisal of the facts.⁴ However, as an order under Section 17(1) or Section (4) can only be passed with respect to waste and arable land and it cannot be passed with respect to land which is not waste or arable and on which buildings stand,⁵ or which is a forest land,⁷ it has been held by our Supreme Court that Government cannot, by wrongly deciding the question regarding the character of the land, give itself jurisdiction to give a direction to the Collector to take possession of the land under Section 17(1).⁷

8.11. Similarly, in respect of the Government's direction under section 17(4) the Supreme Court has observed that "even though the power of the State Government has been formulated under Section 17(4) of the Act in subjective terms, the expression of opinion of the State Government can be challenged as *ultra vires* in a court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is *mala fide*. If, therefore, in a case the land under acquisition is not actually waste or arable land but the State Government has formed the opinion that the provisions of sub-section (1) of S. 17 are applicable, the court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue.

8.12. Section 17 arms the Government with drastic powers. Unfortunately the executive mind seldom understands that the greater is the arbitrary power the greater is the need to use it with caution and restraint and we are sorry to observe that in acquisition proceedings all over the country the urgency clause has been the most abused section for the acquiring authorities appear to have come to the conclusion that under the Land Acquisition Act the exception is meant to be the normal rule, and the normal rule should be treated as an exception.

Some typical cases

8.13. There are a number of cases in which the courts have commented adversely on the misuse of the urgency provision. In this connection, we wish to refer to the facts of three typical cases and the remarks of the courts made therein. These cases are :

1. Sitaram Maroti Girnale v. State of Maharashtra;
2. Gopal Singh v. State of Rajasthan; and
3. Mottayan and Krishnamani Gowinan v. State of Madras.

Sitaram v. State of Maharashtra

8.14. In *Sitaram v. State of Maharashtra*, the owner of the plot of land, being aggrieved by the notification issued under Section 4 and later under section 6 of the Land Acquisition Act, challenged that the notification was not binding and otherwise invalid on several grounds. It appears that the village was affected by the floods during heavy rains in 1959 which resulted in damage to the residents. The Commissioner of Nagpur issued a notification under section 4 on 21st July 1960. The proposal was subsequently abandoned and a notification to that effect was published on 5th January 1961 cancelling the earlier notification dated 21st July 1960. Again on 15th December 1961, another notification under section 4 of the Land Acquisition Act was issued proposing to acquire the land for extension of the Gaothan. By this notification the land belonging to the petitioner was proposed to be acquired. At the same time, the Commissioner dispensed with the provisions of section 5A of the Act in exercise of his powers under section 17(4) of the Act. The petitioner sent his representation to the Revenue Department on 2nd January 1962; and was informed on 5th January 1962 that his representation was being considered. On 18th January 1962, the Commissioner issued a final notification under Section 6 of the Act. While allowing the petition, the High Court of Bombay observed as follows :—

"But we may observe that it has become almost a rule for the acquiring authority in such cases to apply the urgency clause; and to dispense with the provisions of Section 5-A, which enables the owner or occupier of the land proposed to be acquired to raise objections before the acquiring authority. In the instant case, it is pointed out that even in the first proposal, under which survey No. 253 was proposed to be acquired and notification under section 4 of the Act was issued on 21st July 1960, the Commissioner has similarly applied the urgency clause and directed that the provisions of section 5-A shall not apply. However, that proposal was subsequently abandoned. The return did not disclose the circumstances in which that proposal had to be abandoned. If it was considered necessary urgently to take possession of the land proposed to be acquired in exercise of the powers under section 17 of the Act, and deprive the occupant or persons interested from raising objections under section 5-A, it is difficult to see why that land was suddenly found to be unsuitable for acquisition at a later period. Similarly, in the instant case also the purpose for which the land is proposed to be acquired is to settle flood affected persons. Floods which caused damage had taken place

⁴ *Nagarathinam v. State of Madras*, ILR (1968) 1 Mad. 174, *Ishwarlal v. State of Gujarat*, ILR 1967 Guj. 620.

⁵ *Nandeshwar Prasad v. U.P. Government*, A.I.R. 1964, S.C. 1217-1218.

⁷ *Raja Anand v. State of U.P.*, A.I.R. 1967, S.C. 1081.

⁸ *Ibid.*, following *Jaichand Lal Sethia v. State of West Bengal*, AIR 1967 SC 483 and *King Emperor v. Sibnath Banerjee* 72 Ind. App., 241; AIR 1945 PC 156.

⁹ AIR 1963 BOMBAY 242.

in 1959, and again in 1961, but the action for acquisition of land was not taken till the month of January this year (1962). It is difficult to see how there was an urgency of taking possession in January, 1962. Obviously, the danger from floods has ceased to be an urgent threat or even any threat at all. *We are not, therefore, satisfied from our experience about the use of the urgency clause in similar notification that the acquiring authority applies its mind in deciding whether or not the urgency clause should be made use of, and thus deprive the owners and persons interested in land, of a valuable opportunity to raise objections to the proposed acquisition. In fact, sometimes if valid objections are raised, the acquiring authority itself is saved from further trouble, and it can correct its mistake if it is pointed in time. The acquiring authority deprives itself of this opportunity, as the facts of this case disclose, by depriving the occupants of their right of raising objections to the proposed acquisitions.*"

Gopal Singh v. State of Rajasthan

8.15. Another glaring example of the abuse of urgency provisions is furnished by the case of *Gopal Singh v. State of Rajasthan*¹⁰. Gopal Singh and Suran Singh had a common ground situated in village Redi. In 1955, the Panchayat of village Redi came to a conclusion, that the abadi area of the village should be extended by acquiring some agricultural land adjoining the inhabited area in order to convert it for purpose of inhabitation. It, therefore, wrote to the Tehsildar for acquiring the land for the same purpose. The matter was, however, dropped after four years by orders of the Collector. Again in December, 1959, the Tehsildar recommended to the Collector for acquiring the land for the same purpose. The Collector issued a notification under Section 4(1) of the Rajasthan Land Acquisition Act and the notification was published in the Rajasthan Gazette on 20th September 1959. The petitioners presented an application dated the 8th November 1960, to the Collector raising certain objections against the acquisition of their land. They were ignored and a declaration under section 6 was issued without giving the objectors any appropriate opportunity of being heard. Strangely, urgency provisions were invoked and direction under Section 17(4) was issued after the lapse of one year after the notification under section 4(1).

8.16. Commenting on the procedure adopted by the State Government, the High Court, while quashing the proceedings, observed as follows:

"Before parting with the case, it would not be out of place to observe that under the Constitution of India all citizens have a fundamental right to acquire and dispose of their property. The Land Acquisition Act, no doubt, enables the Government to acquire their property, if it

is needed for purposes mentioned therein, but it is extremely necessary that the provisions of this Act should be strictly adhered to and followed. Normally, every person, who has interest in land, which is sought to be acquired should have a notice of the notification which is issued under Section 4(1), so that he may be able to file his objection, if there is any. He should also have an opportunity of being heard. The law requires that there should be a proper enquiry and then the decision upon his objections should be that of Government and not of the officer inquiring into them. It is only after a decision regarding his objection is given, that a declaration under section 6 of the Act should be made. In cases of urgency, special powers have been given under subsection (1) and (4) of Section 17 of the Act. The question of urgency may not be justiciable, but the powers must be used only when there is urgency and they should not be used just to cover up the deficiencies, if any left out by officers concerned under section 4(1) or section 5-A. In the present case, we find that although a move about acquiring the petitioner's land had commenced as early as in 1955, it was dropped in 1959. The question was again taken up towards the end of 1959, and the first notification under Section 4(1) was published in August, 1960. The petitioners presented their objections on 3rd November, 1960 but they were just ignored and a declaration under Section 6 was made on 3rd June, 1961. It appears that the notification was then issued on 20th June, 1961 showing an urgency and this has given a handle to the petitioners to allege that it was made just to cover up the defects of procedure left out by the Collector under Section 5-A."

Case from Madras

8.17. In a recent case from Madras, the urgency clause was again arbitrarily invoked.¹¹ In this case, the land of the Writ Petitioner was sought to be acquired without an enquiry under Section 5-A. On behalf of the State, it was urged that the existing areas where the Harijan families were residing were congested and low-lying, rendering the habitation unhealthy and insanitary and therefore there was need for urgent acquisition of land. While quashing the Land Acquisition Proceedings from the stage subsequent to the notification, the High Court observed that such difficulties as existed in the present colony had been of long duration and were not of recent origin. It was also seen from the records that the matter had been pending for nearly six years until the notification in question was published in May, 1965. In the circumstances, it was held that resort to the urgency clause could not be supported.

¹⁰. AIR 1964 Raj 270.

¹¹. Mottayan and Krishnamani Gowinan v. State of Madras, Writ Petition Order 27-3-1968 vide Hindu of 28-3-1968.
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8.18. A review of the above-mentioned cases, which arose in three different States and they are only three samples picked at random from a very large number of similar cases, discloses that the urgency clause has been used as a rule rather than an exception and this was also the tale of woe revealed in the course of the evidence recorded by us at several places. This is a sorry state of affairs, which we feel, should be corrected by amending the existing law. Section 5-A of the Land Acquisition Act proceeds on the basic principle of natural justice that no man's property shall be acquired unless he has been given an opportunity of being heard, and in our view though there would be justification for possession of the land without an inquiry under Section 5-A in an emergency, we think that in order to check flagrant abuse such a procedure should not be permitted in cases of emergency, not specified in the Act. Under the existing position of the Law, the judicial control over the Government's discretion to invoke Section 17(1) or 17(4) is very limited, and it has been noticed that Government invokes this clause in such cases where there exists no really pressing need calling for an expeditious action, but only for cutting short the normal procedure. A number of cases where there is an abuse of power under Section 17(1) and Section 17(4) are not taken to the court simply because under the existing law, the question of urgency is not justifiable.

8.19. We were rather surprised to note that some of the States have by amending the Land Acquisition Act empowered the Collector to take immediate possession of any land even for such trivial purposes as that of a library or educational institution¹² etc. This is a serious inroad on the rights of the land-holder.

Recommendations of the Law Commission

8.20. We find that the Law Commission has recommended the use of the special powers in cases of specified emergencies only. Sections 31 to 34 in the draft bill of the Law Commission deal with the taking of possession with consent or in urgent cases.¹³ Extracts of these provisions are annexed. Under the scheme of Law Commission, the restriction under Section 17 confining the power to take immediate possession to waste and arable lands has been removed. In Section 32 of their Bill, the Commission has specifically included emergencies of the nature contemplated in sub-section 2 of section 17, such as the repairing of the breaches in the means of communication.¹⁴ The Commission has added a new sub-section to the effect that the Collector should on taking possession, immediately report the same to the appropriate Government together with the reasons therefor. Thereupon the appropriate Government has to decide within two months of the receipt of the report whether procedure for acquisition of land should be commenced or not. If the Government fails to decide within

four months of the date of taking possession, the persons interested in the land are entitled to restoration of possession of the land together with compensation. Apart from any question of any emergency the Collector is also authorised to take possession of land if the persons interested give their consent and surrender possession by giving their right to object to the acquisition.¹⁵

8.21. The draft Bill of the Law Commission further provides that in any case where immediate possession has been taken (whether by consent or otherwise) if the appropriate Government does not wish to proceed with the acquisition of the land, it shall pay compensation in accordance with the provisions of Section 37(2). On the other hand, if the Government proceeds to acquire the land, then it shall vest absolutely in the Government free from all encumbrances on the publication of a declaration of the intended acquisition.

8.22. The draft Bill of the Commission also provides for the payment of interim compensation in such cases of acquisition to the extent of about 60% of the amount which the person concerned would, in the opinion of the Collector, be entitled to claim in respect of the land. Where payment is to be made for damage sustained by sudden dispossession, the dispute as to the sufficiency of the amount is to be referred by the Collector to the Court. Sub-Section 4 of Section 17 has been omitted by the Law Commission because under the scheme of the Commission, possession can be taken by the Government even before the issue of a notification under Section 4.

Our Recommendation

8.23. Subject to certain modifications, we agree basically with the recommendations of the Law Commission as embodied in Sections 32 to 34 of their draft Bill. The modifications which we suggest are as follows :—

- (1) That an opportunity should be provided to the dispossessed land-owner to appeal to the Government against the decision of the Collector in the first instance when he takes possession of his land on all grounds available to him;
- (2) That the interim compensation which was suggested by the Law Commission as 60% of the value estimated by the Collector should be raised to 90% and this should be given to the land-owner;
- (3) That the land-owner should be provided an opportunity to take his grievances to a court of law if he is dissatisfied by the order of the Collector upheld by the Government.

¹². See the Amendments in the Andhra Pradesh, Haryana, Punjab and Madras Acts.

¹³. See the Tenth Report of the Law Commission of India on Law of Acquisition and Requisitioning of Land.

¹⁴. S. 32(1)(b).

¹⁵. S. 31.

8.24. We have considered the State Amendments in respect of the purposes for which the provision of Section 17 can be applied, as well as the recommendations of the Group of Experts on land acquisition and have come to the conclusion that matters such as planned development, sanitary improvements and the like cannot be included under the head of 'Emergency' for the application of Section 17. We are of the view that the provision of Section 17 should be made applicable to the cases of emergency specified in Section 32 of the Draft Bill of the Law Commission.

8.25. Though we have adopted Sections 32 to 34 in the Bill of the Law Commission subject to certain modifications, we are not in favour of including the provisions of Section 31 of the said Bill in the Land Acquisition Act. Section 31 provides that apart from emergency, the Collector may after issue of notification under Section 4(1), take possession of the land if the persons interested in the land

express in writing their willingness to surrender possession of the land by waiving their right to object to the acquisition.

8.26. We are of the view that this provision is likely to create intricate and complex problems. There is an appreciable danger that permission might be given in quite a few cases by persons who may not be qualified to give such permission and whose own right to the land in question may not be absolute and even highly questionable. All sorts of legal difficulties might arise and this method instead of hastening the process of acquisition might actually prove to be a hurdle in its way and defeat its very purpose. It is very difficult to determine persons interested before objections are invited. In the circumstances, the possibility of payment being made to wrong persons having defective title cannot be ruled out. Government is likely to suffer loss in cases of this kind.



ANNEXURE

(Ref. para No. 8.20)

Extracts from the Draft Bill of the Law Commission

Taking possession with consent or in urgent cases

Section 31

The Collector may, at any time after the issue of a notification under sub-section (1) of section 4, take possession of the land so notified, if the persons interested in the land express in writing their willingness to surrender possession of the land and waive their right to object to the acquisition of the land.

Section 32

(1) Whenever, owing to any sudden change in the channel of any river or other unforeseen emergency, it becomes necessary.

(a) for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside or a ghat station, or of providing convenient connection with or access to any such station; or

(b) for the Government to acquire immediate possession of any land for the purpose of maintaining road communications or traffic over roads or repairing breaches in channels, river bunds or tanks or maintaining irrigation or water supply or drainage;

the Collector may even before a notification under sub-section (1) of section 4 has been issued enter upon and take possession of such land

Provided that the Collector shall not take possession of any building or part of a building under this section without giving the occupier thereof at least forty-eight hours notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(2) The Collector shall immediately report to the appropriate Government the fact of such taking possession and the reasons therefor. The appropriate Government shall then within two months of the receipt of such report, notify in the Official Gazette whether the acquisition of the land under the provisions of this Act should or should not be proceeded with.

(3) If within four months of the date on which possession of the land is taken by the Collector, the

appropriate Government does not notify in the Official Gazette whether the acquisition of the land under the provision of this Act should or should not be proceeded with, then, notwithstanding anything contained in sub-section (2), the persons interested may apply to the court for an order against the Collector for

(a) restoration of possession in accordance with their respective interests, and

(b) payment of such compensation as the court may determine.

Section 33

Where possession of any land is taken under Section 31 or section 32, the following provisions shall apply

(a) if the appropriate Government withdraws from the acquisition of the land, compensation shall be paid in accordance with the provisions of sub-section (2) of section 37;

(b) if the acquisition of the land is proceeded with, the land shall vest absolutely in the appropriate Government free from all encumbrances on the publication of a declaration in respect of the land under section 8; and

(c) the Collector shall at the time of taking possession, pay or offer to each person interested, as interim compensation for the acquisition of the land, an amount not exceeding sixty per centum of the amount which, on a preliminary estimate the person concerned would in the opinion of the Collector, be entitled to claim for the acquisition of the land; and if the amount so offered is not accepted, the Collector shall deposit it in the court.

Section 34

Where possession of any land is taken under section 32, the Collector shall, at the time of taking possession, pay or offer to the persons interested compensation for the standing crops and trees, if any, such land and for any other damage sustained by them caused by such sudden dispossession and not except in section 22; and, in case of dispute as to the sufficiency of the amount so paid or offered he shall at once refer the dispute to the court for decision.

CHAPTER '9
EXTENT OF GOVERNMENT RESPONSIBILITY FOR
REHABILITATION OF EVICTED FAMILIES AND
RECOMMENDATIONS ABOUT DISCHARGE OF THIS
RESPONSIBILITY



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INDEX

	PARAS. No.
1. Position of law under land Acquisition Act	9.2 to 9.3.
2. Person Interested in the land acquired	9.4 to 9.6.
3. Damage sustained at the time of Collector's taking possession of the land	9.7.
4. Injurious affection of earnings by reason of acquisition	9.8 to 9.11.
5. Compensation for change of residence or business	9.12.
6. Position of Law in U.K.	9.13 to 9.20.
7. Measure of compensation	9.21 to 9.22.
8. Yearly Tenancies and Lesser Interests	9.23.
9. Discretionary payments for disturbance	9.24 to 9.29.
10. Extent of Rehabilitation compensation—Position under the existing law	9.30.
11. Recommendations of Law Commission	9.31.
12. Provisions of two Private Members' Bills introduced in Parliament	9.32.
13. Recommendations of Group of Experts	9.33.
14. Our Recommendations	9.34 to 9.35.
15. Who should be regarded as displaced persons for the purpose of rehabilitation	9.36 to 9.38.
16. Resettlement of Displaced Persons	9.39 to 9.41.
17. Economic Rehabilitation	9.42 to 9.44.
18. Loans and financial assistance	9.45 to 9.47.
19. Preferential treatment to displaced persons in the matter of employment.	9.48 to 9.58.
20. Financial Resources for Rehabilitation	9.59 to 9.62.
21. A statement giving details of facilities/amenities provided by the various project authorities for resettlement of displaced persons	Annexure I.
22. Government of India directive about the principles to be kept in view by the Boards of Directors and Managing Directors/Chairmen of Public Sector Projects while making recruitment to posts within their projects	Annexure II.



Extent of Government Responsibility for Rehabilitation of Evicted Families and Recommendations about Discharge of his Responsibility

9.1. The fourth term of our reference requires us to examine the extent of Government responsibility for rehabilitation of evicted families in cases of acquisition of land for projects and the steps that may be taken for the discharge of this responsibility. In order to examine the complex socio-economic problem of rehabilitation we invited the views of the State Governments/private organisations/individuals etc. on the following questions :

- (i) whether the cost of rehabilitation on displaced persons should be charged towards cost of acquisition over and above the compensation and/or found out of general revenue or special levies;
- (ii) who should be included in the category of 'displaced persons';
- (iii) whether persons who indirectly suffer damage as a result of acquisition e.g., the labourers, artisans and similar other classes of persons who lose their occupations due to whole-sale shifting of the inhabitants when large areas are acquired, should be included in the term 'displaced persons'; and
- (iv) what should be the nature and extent of responsibility.¹

Position of Law under Land Acquisition Act

9.2. Under the Land Acquisition Act, 1894, no compensation is payable to the persons who are not interested in the land on the ground that their earnings have been affected by the change of ownership or indeed on any ground. However, if the acquisition injuriously affects the earnings of the person interested, he is entitled to claim further compensation beyond the market value of the land.

9.3. Section 23(1) clauses fourthly and fifthly of the Land Acquisition Act, 1894, provides, to some extent, for payment of compensation for rehabilitation of persons interested in the land acquired. In determining the amount of compensation, the Court is required to take into consideration under the clause fourthly of Section 23(1), the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings. A claim of compensation

under this provision would be tenable only if three conditions are fulfilled namely :—

- (1) The party must be a person interested in the land acquired;
- (2) The damage must have been sustained at the time of the Collector's taking possession of the land;
- (3) The damage must be by reason of the acquisition injuriously affecting his other property, (Movable or Immovable) in any other manner, or his earnings.

Person interested in the land acquired

9.4. Under the existing law, compensation for the injurious affection of the earnings can be claimed by the 'person interested' in the land acquired. The expression 'person interested' as defined in S. 3(b) of the Land Acquisition Act, includes "all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land". For claiming compensation it must be shown that some land of the claimant has been taken in which he claims an interest or over which he has an easement. Quarry-men, ploughmen or diggers who work for wages are not persons interested. The Privy Council had rejected the claim of fortysix quarrymen for loss of earnings in consequence of acquisition of mines from a Zamindar² and held that "if the acquisition injuriously affects the earnings of the person interested, he is to obtain further compensation beyond the market value of the land. But no compensation is given to persons not interested in the land on the ground that their earnings may be affected by the change of ownership, or indeed on any ground. The forty-six quarrymen are not more interested in the land than a ploughman or a digger is interested in the land on which he works for wages. Nor are their earnings the earnings of their Zamindar, who is interested."

9.5. However, the expression 'person interested' is of wide amplitude and covers not only an owner of the land acquired but also persons who have a possessory interest in land. A tenant of land has an interest in the land and his earnings as a tenant may also be injuriously affected by reason of the acquisition of the land.³

9.6. The Government of Gujarat⁴ has amended the Land Acquisition Act to provide specifically that the damage sustained by the tenant of the land

¹ See question D. 17 of the questionnaire issued by the Committee (Appendix 5).

² Sectertary of State v. Shanmugaraya Mudaliar, ILR 16 Mad. 569. (P.C.)

³ Collector Bilaspur v. Hans Raj. AIR 1961 H.P. 25.

⁴ By S. 14 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

by reason of the acquisition injuriously affecting his right as tenant should be taken into consideration. The Government of West Bengal, has, by an amendment of the Act,⁶ included 'Bargadar' i.e. the person who cultivates the land of another person on condition of delivering a share of the produce of such land to that person in the expression 'person interested' and compensation is payable to him for the loss of earnings in consequence of the acquisition of land where earning was derived directly from such land.

Damage sustained at the time of Collector's taking possession of the land

9.7. Another condition for sustaining a claim of compensation under clause fourthly of Section 23(1) is that the damage must have been sustained "at the time of the Collector's taking possession of the land." The words "that the damage must be sustained at the time of Collector's taking possession" have been interpreted to mean the time when the damage takes place and the right to compensation arises, and it is sufficient to bring a case within this provision if, when possession is taken, there is other property or earnings injuriously affected, so as to cause some damage to the person interested.⁷ The compensation is payable not only for the damage which has actually been caused at the time of Collector's taking possession of the land but also the one which can be reasonably anticipated and estimated⁸ at that time.

Injurious affection of earnings by reason of acquisition

9.8. The compensation payable is for the injurious affection of earnings by reason of acquisition. Injurious affection merely means depreciation in value or earnings.⁹ The word 'earnings' has not been defined in the Act. The courts have given it ordinary dictionary meaning e.g. money earned by personal labour or skill¹⁰ or money earned by trade or other service carried on by the owner in the premises acquired.

9.9. A person is entitled to claim damage for loss of earnings if he carries on some business in the acquired premises and by virtue of the acquisition he is deprived of his profits by reason of the fact that he cannot find any other place where he can carry on the business in which he was engaged on the acquired premises.¹⁰ Loss of earning to be an injurious affection must be one in trade or other services carried on by the owner in the premises acquired.¹¹ No damages apart from the market value assessed are allowed on the ground that the owner might have made profits by engaging in a certain trade or business on the land in question.¹² The term 'earnings' also includes any provable diminution in the value of the good-will in trade consequent on the taking of the premises in which such trade is carried on and the consequential loss of his earnings but it does not include prospective earnings.¹³ The 'damage' for which compensation is permissible must have been sustained in carrying on a lawful business in lawful manner.¹⁴

9.10. Normally compensation for the loss of trade or business earnings is awarded on the basis of income of such period, as will sufficiently compensate him under the circumstances of the particular case. In the words of Lord Goddard, "the basic principle, so far as loss of earning and out of pocket expenses are concerned is that the injured persons should be placed in the same financial position so far as can be done by an award of money as he would have been had the accident not happened....."¹⁵

9.11. In assessing the damage, the ordinary principles of law as to remoteness of damages apply with the result that compensation for loss of trade or business earnings would be in respect of the damages sustained directly on account of taking of land under the compulsory powers.

Compensation for change of residence of business

9.12. In determining compensation under clause fifthly of Section 23(1) of the Land Acquisition Act, the Court is required to take into consideration the

⁶ By S. 3 and S. 4 of the Land Acquisition Act (West Bengal Amendment) Act, 1963.

⁷ Collector of Dinajpur v. Girija Nath Roy, 25 Cal. 346.

⁸ Indo Burma Petroleum C. v. the Collector of Yenang Yaung, 12 I.C. 202; 4 Burma L.T. 250.

⁹ Duke of Buccleuch v. Metropolitan Board of Works, (1872) L.R. 5 H.L. 460.

¹⁰ Collector, Bilaspur v. Janki Devi, AIR 1961 H.P. 42.

¹¹ Collector, Saharanpur v. Jagdish Saran C.A. No. 457 of 1965 dated 1st March, 1968 decided by the Supreme Court.

¹² Where a site in which a coffee hotel frequented by practitioners in court, is acquired, the loss in income of that trade should also be added to the value of the land—Venkatachiar v. Divisional Officers, Tinevelly, 14 IC 625. On acquisition of a tank the lessee of the tank who reared and stocked fish in it has also to be compensated—Narain Chandra Barol v. Secretary of State, ILR 28 Cal. 152.

¹³ Suresh Chandra Banarjee v. Secretary of State, 100 IC 190, AIR 1927 Cal. 357.

¹⁴ L.A. Officer v. Jamnabai, 47 Bom. L.R. 893; AIR 1946 Bom. 142.

¹⁵ Naramiyan Umarbhi v. L.A. Officer, 47 Bom. L.R. 853 AIR 1946 Bom. 171.

¹⁶ British Transport Commission v. Gowsley, (1955) 8 AIR E.R. 796.

reasonable expenses if any, incidental to change of his residence or place of business, if in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business. The costs of removal consequent on acquisition to new premises are payable under this clause. Expenses of removal include the cost incurred in removal of the family deity, including essential ceremonies.¹⁶

Position of Law in U.K.

9.13. The position of law as observed in the United kingdom is much the same. Where the land of an owner—whether freeholder or lessee—is compulsorily acquired he is entitled to compensation not only for the value of his interest in the land taken but also, in appropriate cases, for the loss he has suffered from being disturbed in his enjoyment of it.

9.14. There is, however, no specific statutory provision or sanction for compensation "for disturbance" but such compensation flows from the application of the principle that the basis on which compensation for lands taken is the value of the lands to the owner.¹⁷

9.15. No express mention of "disturbance" occurs in the Land Clauses Act, 1845. But in interpreting the words "compensation" and "value" in Section 63 of that Act—now re-enacted in substantially the same form in Section 7 of the Compulsory Purchase Act, 1965—the courts have always given consideration to the fact that the owner was a person who was compelled to sell, and that part of the compensation properly payable to him was any loss he might suffer from disturbance. In other words, the owner had "the right to receive a money payment not less than the loss imposed on him in the public interest but on the other hand, no greater."¹⁸

9.16. The Land Compensation Act, 1961 (replacing the Acquisition of Land (Assessment of Compensation Act, 1919), which applies to all compulsory purchase under any statute whether passed before or after the passing of the Act, does not affect the principle of assessment of compensation on the basis of value to the owner. The Act preserves an owner's right to compensation when he is disturbed by the compulsory acquisition.¹⁹

9.17. Rule 2 of Section 5 of the Land Compensation Act,²⁰ 1961 now provides that in assessing compensation the value of land shall be taken to be the price which the land, if sold in the open market

by a willing seller might be expected to realise. By itself this provision might have ruled out a claim for compensation for disturbance, since a willing seller in the open market does not normally receive his removal and other incidental expenses from the purchaser. But Rule 6 of Section 5 expressly provides that the owner's right to compensation for disturbance or any other matter not directly based on the value of land shall remain unaffected.

9.18. Rule 6 "does not confer a right to claim compensation for disturbance. It merely leaves unaffected the right which existed before the Act of 1919, namely that in a proper case the owner was entitled to claim that the compensation to be paid for the land should be increased on the ground that he had been disturbed."²¹

9.19. The principle governing the assessment of compensation for disturbance is that any loss sustained by a dispossessed owner (at all events one who occupies his house) which flows from a compulsory acquisition may properly be regarded as the subject of compensation for disturbance provided, first, it is not too remote and, secondly, that it is the natural and reasonable consequence of the dispossession of the owner.

9.20. An owner in possession of land with no potentialities beyond its present use and not contemplating removal would not ordinarily be a willing seller unless the price covered not only the market value of the land but also the expenses arising in consequence of his removal elsewhere.²² Where, however, the land has potentialities beyond its present use which can only be realised by his giving up possession for exploitation by the purchaser, the owner is entitled to the value of those potentialities. The land has two values to him (i) the existing use value and a right to compensation for disturbance, and (ii) the potential value; and he is entitled to whichever is the higher.²³

Measure of Compensation

9.21. Compensation for disturbance includes the cost of sale or removal of furniture or goods and other incidental expenses which the owner/occupier incurs in consequence of being dispossessed of his premises. An owner-occupier, dispossessed of his house and forced to find other premises has been held entitled to recover legal cost, surveyor's fees and travelling expenses in connection with the purchase of new premises, also surveyor's fees for a report on a possible new house, which was rejected as unsatisfactory.²⁴

¹⁶. Calcutta Improvement Tribunal Case No. 62 of 1926.

¹⁷. Para 4-215, Cripps, Compulsory Acquisition of Land 11th Edition.

¹⁸. Per Scott. L.J., in *Horn v. Sunderland Corporation* (1941) All E.L.R.I.

¹⁹. Section 5(6) of the Land Compensation Act, 1961, which replaces Rule 6 in Section 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919.

²⁰. Replacing the corresponding rule in the Acquisition of Land (Assessment of Compensation) Act, 1919.

²¹. *Horn v. Sunderland Corporation*, (1941) 2 K.B. 26.

²². Para 4-217, Cripps Compulsory Acquisition of land.

²³. *Vyricherla Narayan Gajapatiraju v. the Revenue Divisional Officer, Vizagapatam* (1939) A.C. 302, P.C. at p. 313; *Horn v. Sunderland Corporation* (1941) 2 K.B. 26, C.A. at p. 39.

²⁴. *Harvey v. Crawley Development Corporation* (1957) i.Q.B. 485.

9.22. Loss of business and of goodwill in so far as the business or goodwill enhances the value are to be considered in assessing the compensation and so must the costs of removal, loss incurred until suitable premises are 'obtained' and the value of fixtures if taken or the loss on them if not taken. Compensation for the expulsion is based on principles similar to damages in an action for trespass.²³

Yearly Tenancies and Lesser Interests

9.23. Compensation for disturbance is a part of the purchase money for the land and the persons interested are those who have had their interests purchased, i.e. persons entitled to a notice to treat, freeholders, lessees, mortgagees etc. However, a tenant with no greater interest than a tenancy for a year or from year to year, who is not entitled to a notice to treat and whose interest is not purchased, has a specific statutory right to compensation for the value of his unexpired interest and in addition, compensation for disturbance. If such a person is required to give up possession before the expiration of his term or interest he is entitled to compensation for the value of his unexpired term or interest and for any just allowance, which ought to be made to him by an incoming tenant and for any loss or injury which he may sustain.²⁴

Discretionary payments for Disturbance

9.24. The Land Compensation Act,²⁵ 1961, gives the acquiring authorities a discretionary power, similar to the existing powers in the Housing Act, 1957, SS. 32, 63 and 100, and the Town and Country Planning Act, 1962, s. 84(5), to pay to any person displaced from a house or building which they acquire reasonable allowance towards—

- (a) removal expenses,
- (b) losses likely to be incurred by a trade or business arising from removal.

9.25. The Agriculture (Miscellaneous Provisions) Act, 1963, s. 22 has recently extended the discretionary powers to allow similar payments to occupiers of agricultural land.

The provisions of the above Acts are summarised below :

(a) Allowance to persons displaced from houses and buildings

In connection with a compulsory acquisition or a sale to an authority possessing compulsory purchase powers the acquiring authority may pay a

person displaced from a house or other building a reasonable allowance towards his removal expenses.²⁶ They may also pay a person carrying on a trade or business in a house or other building a reasonable allowance towards the loss which he will sustain through disturbance of his trade or business in a house or other building a reasonable allowance towards the loss which he will sustain through disturbance of his trade business consequent on his having to quit.²⁷ In estimating loss, they must have regard to the period for which the premises might reasonably have been expected to be available and to the availability of other suitable premises.²⁸

9.26 These provisions have effect without prejudice to the operation of other similar enactments,²⁹ e.g. under the Housing Act, 1957.

9.27. Section 30 of the Land Compensation Act, 1961 would appear to be intended to cover cases where there is no legal right to compensation for disturbance, but where the acquiring authority considers that some payment should reasonably be made to the person displaced.³⁰

(b) Allowance to persons displaced from agricultural land

9.28. Where any interest in land is compulsorily acquired or is sold by agreement to an authority possessing compulsory purchase powers and the land is used for the purposes of agriculture by way of a trade or business, and the person carrying on the trade or business is displaced from the land, the authority may pay him such reasonable allowances as they think fit towards his removal expenses.³¹ They may also pay him for the loss which, in their opinion, he will sustain by reason of the resulting disturbance of his trade or business.³² In estimating this loss regard must be had to the period for which the land might reasonably have been expected to be available for the purpose of the trade or business, and to the availability of other land suitable for that purpose.³³

9.29. These provisions have effect without prejudice to the operation of other similar enactments.³⁴

Extent of Rehabilitation compensation—Position under the existing law

9.30. The law in the United Kingdom as well as the law as contained in Clauses fourthly and fifthly of section 23(1) of our Land Acquisition Act, 1894,

²³. See para 284, pages 163-64—Halsbery's Laws of England. Vol. 10, Third Edition.

²⁴. S. 121 of the Lands Clauses Act, 1845 and S. 20 of the Compulsory Purchases Act, 1965.

²⁵. S. 30 of the Land Compensation Act, 1961.

²⁶. Land Compensation Act, 1961, S. 30(1)(a).

²⁷. S. 30(1)(b) *Ibid*.

²⁸. S. 30(2) *Ibid*.

²⁹. S. 30(3) *Ibid*.

³⁰. The Section is a re-enactment of Section 13 of the Town and Country Planning Act, 1959, so that it will apply in any case where the notice to treat is served after 29th October, 1958, or the contract of sale is made after that date.

³¹. Agriculture (Miscellaneous Provisions) Act, 1963 S. 22(1).

³². *Ibid*.

³³. S. 22(2) *Ibid*.

³⁴. S. 22(3) *Ibid*.

does provide for payment of compensation attributable to the disturbance involving a change of residence or place of business in consequence of the acquisition of the land. However, this compensation is payable only to the persons interested in the land such as the owners, the tenants and mortgagees in possession etc. Even in their cases the evidence led before us unmistakably shows that these salutary provisions of law were very frequently treated as a dead letter by the acquiring authority.

Recommendations of Law Commission

9.31. Though the Law Commission has recommended the retention of clauses fourthly and fifthly of Section 23(1) the question of rehabilitation of evicted families by adopting other measures was not considered by them. The Commission, however, referred to the suggestion made by the Bihar Government for amending the definition of 'person interested' so as to bring within its scope a person who suffers damage as a result of the acquisition even where no part of his land or right or easement has been acquired or affected. The Bihar Government has pointed out that as a result of the Mayurakshi Reservoir Project in that State, vast areas has been submerged under water and the inhabitants thereof have had to shift to other places. As a result, labourers and professional men working in the sub-merged areas lost their occupation. They were not paid any compensation since no part of their land or right or easement had been acquired or affected and they could not, therefore, be treated as coming within the purview of the expression 'persons interested'. As the suggestion raised an important question of policy, the Commission did not think it fit to enlarge the definition so as to include such cases. However, they expressed the view that the matter deserved careful consideration in as much as the loss suffered by the persons in the instance mentioned was the direct result of the acquisition of the land.³⁷

Provisions of two Private Members' Bills introduced in Parliament

9.32. Before we further discuss this problem, we wish to take note of the provisions of two Private Members' Bills, which we have already referred to in different context, introduced by Shri S. C. Samanta, Member, Lok Sabha during 1967 and by Shri Hem Raj, Member, Lok Sabha during 1968. Shri Samanta's Bill sought *inter alia* to add a new section to the Land Acquisition Act providing that whenever bulk acquisition of land involves displacement of 100 or more families, it should be the responsibility of the acquiring authority to provide for the rehabilitation of the displaced persons. Shri Hem Raj's Bill sought to amend the definition of persons 'entitled to act' by providing that in case the whole village or blocks of village are acquired, all its residents, viz., tenants, artisans landless labourers, should be deemed to be persons 'entitled to act'. A proviso was also sought to be added

to Section 16 of the Act providing that where the acquisition or possession of land involves displacement of 25 families or a full village or block of villages, it should be the duty of the acquiring authority to rehabilitate the displaced persons and their rehabilitation should form the part of the project expenditure. Both the Bills sought to make the rehabilitation of evicted families legal responsibility of the appropriate government under the Act.

Recommendations of Group of Experts

9.33. The Group of Experts who examined the problem of rehabilitation of displaced persons expressed the view that the Government must assume normal responsibility, in principle, of rehabilitation of persons affected as a result of acquisition of land. The group has recorded in its report that one view was that a provision should be incorporated in the Act to the effect that the requiring Department should bear the cost of rehabilitation on the scale to be prescribed, but in the end it came to the conclusion that a policy decision on this issue at the level of the National Development Council would be sufficient to ensure necessary provision.³⁸

Our Recommendations

9.34. We have considered the various aspects involved in the rehabilitation of uprooted families and we feel that measures for rehabilitation need not be provided in the body of the Statute. We, however, want to make it clear that our doing so should not be interpreted that we are not in favour of it or that we do not want that the State should give serious consideration to this human problem. We refrained from doing so because no definite set of laws could be suggested as the problem would vary from State to State and from project to project. Still with a view to rehabilitate the land-owners and lessen the injury of being uprooted we have recommended that the amount of solatium to be awarded under Section 23(2) of the Land Acquisition Act should be increased from 15% to 30%. We feel that the increase in the amount of solatium would go a long way in meeting the cost of rehabilitation in the case of the land owners and other persons interested in the land and entitled to compensation under the provisions of the Act.

9.35. We now propose to deal with the problem of the affected families who do not come in the category of 'persons interested'. It was brought to our notice that the problem of displaced persons as a consequence of acquisition of vast areas of land for various development projects undertaken by the State after Independence, has assumed great importance. We were informed that about 1,81,000 families or about 9 lakh persons have been displaced on account of acquisition of land for 16 river valley projects, and in the case of acquisition of land for

³⁷. See pages 31-32 of the Tenth Report of the Law Commission on the Law of Acquisition and Requisitioning of land.

³⁸. See paras 8.01 and 8.02 of the Report of the Group of Experts.

the 4 Steel Projects, namely, Rourkela, Bhilai, Durgapur and Bokaro, about 16,000 families have been displaced. We had called for information from the State Governments, etc., about the measures adopted by them for dealing with the problem of rehabilitation of families affected as a result of acquisition of land for the projects/schemes of development executed by them. We find that in spite of the fact that there is no legal responsibility on the part of State Governments, etc. to rehabilitate the affected families under the provisions of the Land Acquisition Act, various steps have been taken by them in this direction as a part of their social welfare schemes. Before we make any recommendations in regard to the facilities/amenities which may be provided to the persons displaced consequent on the acquisition of land, we feel it necessary to examine the scope of the definition of displaced persons; the form and nature of assistance necessary for their rehabilitation and the source from which the financial cost involved should be met.

Who should be regarded as displaced persons for the purpose of rehabilitation

9.36. We called for the views of the State Governments etc. for ascertaining whether the person who indirectly suffer damage as a result of acquisition, e.g. the labourers, artisans and similar other classes of persons who lose their occupations due to wholesale shifting of inhabitants when large areas are acquired, should be included in the category of displaced persons.

9.37. A number of State Governments are in favour of including these persons in the category of displaced persons who are compelled to change their residence or place of business. They are also of the view that it is not desirable to specify any class of persons e.g. labourers, artisans etc. in the list of displaced persons. The Government of Bihar have, however, suggested that all persons contributing to socio-economic and cultural life of the community including labourers, artisans should be treated as displaced persons. The Government of Orissa have suggested that the Government may provide facilities providing employment to persons whose nature of profession was such that they can take up the profession elsewhere and that no other relief may be provided to them. Some of the State Governments, however, do not favour inclusion in the category of displaced persons those who indirectly suffer damage as a result of acquisition of land in the category of displaced persons.

9.38. The Group of Experts who examined the problem of rehabilitation was of the view that for the purpose of definition any person who is shifted from his land and habitation as a result of acquisition of his land should be deemed to be a displaced person. The definition of 'displaced persons' so proposed by the Group of Experts refers only to a person who has shifted from his land and habitation as a result of acquisition of his land and does not include persons having no interest in the land but who suffer damage indirectly as a result of acquisition. In our view, such a definition would

be too narrow. It has already been pointed out that the existing law enables the person interested to get compensation not only on the basis of the market value of the land acquired but also, to some extent, for the loss he has suffered from being disturbed in his enjoyment of the land. It is true that it is not possible to compensate each and every individual who has suffered some injury in a large scale acquisition nor can any law be enacted to compensate all the types of injuries caused in the course of a big project but the cases of such labourers and artisans whose occupation is gone and who are compelled to shift and start afresh the struggle for life in new surroundings can be distinguished and needs special attention. These persons have no right to compensation under the existing law. We think that the Government should accept a social and moral responsibility for the rehabilitation of such person as they have been doing under their normal programmes for giving doles to the aged, the infirm and the destitutes. Of course, assistance should be given primarily to the poor and deserving persons who have lost their means of livelihood as a result of the uprooting that is involved in acquisition for big projects. The Government of Maharashtra are of the view that persons rendered landless as a result of large acquisition of land should be provided surplus land made available to the Government under the local ceiling on holdings of agricultural lands Act. In the case of irrigation project some land may be acquired in the command area from big landlords and distributed to persons rendered landless. The Government of Mysore have suggested provision of suitable sites free of cost, construction of roads and drainage works, provision for drinking water, community hall, primary schools, places of worship, approachable roads and irrigation tanks, free transport, credit facilities for building houses, land for cultivation, land for burial ground or such other communal purpose at the places selected for rehabilitation of the oustees. The Government of West Bengal have suggested provision of alternative sites, wherever possible and employment in the project for which the land is acquired. It was further stated that contract for construction of work for the project should be given as far as possible to displaced persons. The Government of Maharashtra have set up a Directorate of Rehabilitation. The Government of Bihar have also appointed a Director of Rehabilitation for each of the major irrigation or industrial projects for safeguarding the interests of displaced persons.

Resettlement of Displaced Persons

9.39. The measures for rehabilitation of displaced persons fall broadly into two categories—(i) resettlement and (ii) economic rehabilitation. We propose to deal with the resettlement measures first. The State Government of Assam have suggested that displaced persons may be settled on the waste lands. The Government of Gujarat have suggested that in addition to home sites provided to displaced persons, about 2 to 3 acres of land may also be provided for cultivation to deserving persons who are

rendered landless in case they cannot be absorbed in alternative occupations. It would, also be necessary to provide other amenities such as drinking water, roads, schools etc. in the colonies which might be set up for rehabilitating displaced persons. The Government of Kerala are of the view that the provision for alternative sites should not be made a condition precedent for the acquisition of the land under the Act and that the question of providing alternative sites to displaced persons, employment etc. should be treated as a detached welfare scheme without disturbing the provisions of the Act. The Kerala State Government do not favour the idea of making land available to all affected persons or of creating a common pool of land in the village, for rehabilitation of displaced persons as the land is scarce in that State. The Government of Madhya Pradesh are of the view that the nature and extent of rehabilitation should vary from place to place depending on availability of facilities.

9.40. We find that the State Governments have followed different policies in the project areas for rehabilitation of displaced persons in their respective States. In the case of Damodar Valley Project, the Central Government as well as Governments of Bihar and West Bengal left to owners the choice of accepting compensation in cash or kind. The Damodar Valley Corporation reclaimed 4,507 acres of land and set up 4 model villages with 343 houses for hire. The displaced cultivators were allotted culturable waste land. The reclamation work was entrusted to the Government of Bihar though the cost was borne by the Damodar Valley Corporation. In the case of Hirakund Project, land was allotted to resettlers at a subsidised rate. In the case of the Bhakra Project, the tenants who were ousted were allotted land on either no profit, no loss basis or at cheap rates. The price of land was recovered in 20 equated half-yearly instalments, the first instalment being payable after 2 years from the date of allotment. The interest was charged at the rate of 5½%. The land measuring 4 to 8 kanals was allotted free of cost to each artisan and labourer who wished to shift and settle in villages set up in Hissar District, where displaced persons were rehabilitated. Canal water and irrigation facilities were also provided. Brick klin licensing and free fishing right in Gobind Sagar Lake were provided to deserving owners. A statement giving details of facilities/amenities provided by the various project authorities for resettlement of displaced persons is annexed.

9.41. The rehabilitation assistance may be in cash or kind. It was urged before us that the payment of monetary assistance to displaced persons is not likely to solve the problem in many cases. For example, in the case of tribal people, past experience has shown that cash compensation was frittered away, and that their recurring income declined causing frustration to them. The consensus of opinion among the State Governments is in favour of adoption of other measures for rehabilitation. We are also of the view that mere financial compensation to the persons interested is not adequate to

solve the problem of rehabilitation. Unless the Governments set up resettlement colonies with essential community facilities, it is not possible for displaced families who do not own land but are part of the social and economic fabric of the village community to resettle themselves. It is, however, not practicable to lay down any hard and fast rule on the subject. We have already recommended, that the Collector should as far as possible, enter into an agreement with persons interested for granting some other land in exchange of the land that has been acquired. We are of the view that economic equilibrium disturbed by land acquisition should as far as possible be restored by resettlement of displaced families. We recommend that the State Governments concerned should undertake responsibility for rehabilitation of uprooted families as their social and moral responsibility. They may allot land to displaced families for the purpose of their resettlement either on lease or on a hire-purchase basis. The cost may be recovered by easy instalments with nominal interest. The displaced cultivators may, as far as possible, be allotted surplus culturable land with irrigation facilities. They may be granted taccavi loans for the purchase of seeds, agricultural implements, fertilisers etc. If the number of displaced families is considerable, new colonies may be set up with necessary amenities such as internal roads, cross drainage works, drinking water, community hall, schools, places of worship, burial ground etc.

Economic Rehabilitation

9.42. We are aware that on account of shortage of land in certain project areas it may not be possible to provide land to the land-holders equal in area to the land acquired by the acquiring authority. In some cases it may not even be possible to provide any cultivable land to the displaced persons or tillers who depend mainly on cultivation. Even in cases where some land has been provided in lieu of the land acquired, the displaced persons may have to be absorbed in certain other vocations or employed on the project, subject to their suitability, to meet their immediate necessities and livelihood. For this purpose they may require training in various crafts. We understand that in most of the projects, suitable measures have been undertaken for imparting training to the displaced persons to enable them to get employment in the project itself. For example, we were informed that at the Ukai Project, centres have been set up for giving training to displaced persons in carpentry, masonry, turning, tailoring, smithy, etc. During the period of training, the displaced persons are given incentives and facilities in the form of stipend at Rs. 30 p.m. and provided free accommodation.

9.43. The Government of Rajasthan are reported to have given preference to persons displaced as a result of the Beas Project for training in the operation and maintenance of heavy earth moving machinery.

9.44. The scheme for the Bokaro project envisages occupational and economic rehabilitation of displaced persons with the assistance of the State

Government, the Bokaro Steel Plant and Hindustan Steel Works Construction Ltd. The rehabilitation schemes include employment of oustees from the land after necessary training. The project authorities are required to provide technical training to one child per displaced family. The qualification for eligibility for technical training was also brought down to the 8th standard education as against the normal Matriculation standard prescribed for the purpose. A stipend of Rs. 70 to 80 p.m. is given to the trainees. Special Coaching classes in English were also started for the benefit of the trainees. The project authorities allotted shops and stone quarries to displaced persons at a nominal rent with the guarantee to purchase the stone from them. The Project authorities also appointed a Welfare Officer to look after and safeguard the interest of displaced persons.

Loans and financial assistance

9.45. The State Governments and Project authorities have brought to our notice that in cases of large acquisition of land, loans and grants are made available to displaced persons to enable them to start their own vocation.

9.46. In the Bhakra project, new irrigation wells were sunk in the area marked for irrigation purpose and subsidy upto a limit of Rs. 750 was allowed upto 200 wells. Taccavi loans were also given upto Rs. 1,000 to each displaced family on the basis of security including that of the land assigned free of cost by the Government. Free sites for shops upto 5 cents were assigned in new colonies to traders for opening and running of shops. In Tungbhadra project taccavi loans of Rs. 300 per head for reclaiming waste land were granted.

9.47. In the Chambal area persons who did not get any compensation or got less than Rs. 500 as compensation were given rehabilitation grant upto Rs. 300 per person subject to a maximum of Rs. 500 from all sources. This grant helped the people to move from the old villages to new places in search of livelihood.

Preferential treatment to displaced persons in the matter of employment

9.48. It has been suggested that one of the measures which can be adopted for rehabilitation is that the persons displaced as a result of acquisition of land for a big project may be given preference in employment to the posts arising in the industries for the establishment of which the acquisition is sought to be made. We find that the question of giving preferential treatment in employment has assumed great importance after Independence owing to a large-scale acquisition of land required for massive scheme of development. The problem posed by the scheme that the 'sons of soil' or mulharis are entitled to preferential, if not exclusive

appointments in industrial establishments started in the respective regions has been considered by the National Commission on Labour in its Report of 1969. As pointed out by the Commission, the demand for the 'sons of the soil' have acquired political overtones in many States mainly because economic development has not been commensurate with rising local expectations.³⁹ In the evidence adduced before the Commission, several unions had complained about the inadequate opportunities and demanded that preference should be given to local persons in the matter of employment, particularly in Undertakings set up by the Central Government and in technical and clerical posts in reputed private sector units.⁴⁰

9.49. The Commission observed that this uneasy feeling about local claims being ignored exists not only among unions, but seems to be shared by the general public. With the large migration of cheap labour from different parts of the country to industrial centres, the local population find their employment openings blocked. Social problems created by this influx and deep-rooted frustration among the local youth have, at times, even posed a grave threat to law and order.⁴¹

9.50. The question whether there are legal difficulties in the matter of excluding non-locals from employment in the State must be considered with reference to the provisions of our Constitution. Clause (1) of Article 16 of our Constitution guarantees equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State. Article 16(2) states that "no citizen shall, on ground only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment or office under the State."

9.51. Article 16 does not, however, prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office (under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to residence within that State or Union Territory) prior to such employment or appointment.

9.52. Nor does Article 16 prevent the State from making any provision for the reservations of appointments to posts in favour of any backward classes of citizens which in the opinion of the State is not adequately represented in the services under the State.⁴² The effect of Article 16 is that nobody can be denied employment in any State on the ground of his being a non-resident in that State.

9.53. While Article 16(1), (2) and (3) refer to Fundamental Rights of a citizen, the Directive Principles of State Policy as embodied in Article 46,

³⁹. Para 7.39 of the Report of the National Commission on Labour.

⁴⁰. Para 7.40 *Ibid.*

⁴¹. Para 7.41 *Ibid.*

⁴². Clause 4 of Article 16.

cast a duty on the State to protect the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes from social injustice and all forms of exploitation. While it is thus possible for the State to reserve in the services under it appointment of posts in favour of any backward class of citizen, no such discrimination can be made in the matter of employment anywhere in the country for any citizen.

9.54. Article 19(1) of the Constitution has also conferred on every citizen of this country the right to move freely throughout the territory of India, to reside and settle in any part of the territory of India, to acquire, hold and dispose of property and to practice any profession or carry on any trade or business. The National Labour Commission expressed the view that on principle, it is difficult to reconcile this concept with the claim that if an industry is established in a region, it is the inhabitants of that region who are entitled exclusively or at least preferentially to employment in that establishment.⁴³ The Commission also thought that such a claim, if accepted, would hamper mobility in economic life altogether and create walls of exclusiveness between different regions. However, having regard to the hard facts and realities of life, the Commission has made certain recommendations which they thought can be reasonably and fairly worked out within limits which will not contravene the basic concept of one citizenship and the Fundamental Rights guaranteed to all the citizens. The Commission pointed out that the main elements in the claims on behalf of the 'sons of the soil' have long been recognised by the Government of India when it laid down certain principles in the matter of recruitment to its public undertakings. A copy of the Government Directives containing the principles to be kept in view by the Board of Directors and Managing Directors/Chairman of public sector projects while making recruitments to posts within their projects is annexed.⁴⁴ The Commission thought that the Directive if implemented in the spirit in which it has been drawn up will provide adequate scope to local persons. Since dissatisfaction still persists in spite of the directive, the Commission recommended that the following steps to supervise its implementation should be taken to remove unjustified apprehension among the local candidates :—

- (i) While recruiting unskilled employees, first preference should be given to persons displaced from the areas acquired for the project and next preference should be given to those who have been living within the same vicinity.
- (ii) The selection of persons to posts in lower scales should not be left entirely to the head of a public sector enterprise. It should constitute a Recruitment Committee with a nominee of the Government of the State within which

the unit is located as a member of the Committee.

(iii) In the case of middle-level technician, where the recruitment has to be on the all-India basis, a member of the State Service Commission should be associated in making selections in addition to the State Government official on the Board of Directors.

(iv) Apart from the report sent to the concerned Ministry at the Centre, the undertaking should send a statement at regular intervals, preferably every quarter, to the State Government about the latest employment and recruitment position.

9.55. According to the Commission, the steps recommended above should also be made applicable equally to recruitment in the private sector.

9.56. We endorse the above recommendations of the Labour Commission in connection with rehabilitation of persons displaced as a result of large-scale acquisition of land for projects.

9.57. We are of the view that the payment of compensation for land acquired for industrial and other projects should not be a sufficient discharge of government obligation to land owners and the rights of labourers and other artisans who have no proprietary right in the land but who are uprooted and lose their jobs and vocations as a result of large scale acquisition of land. After the land passes into the hands of new owners who set up industrial or other units there is sufficient time to train displaced persons and dispossessed land owners whose basic qualifications are sufficient to undertake the requisite training for absorption in the Project.

9.58. We have indicated above various measures which have been adopted by the State Governments/Projects for the economic rehabilitation of displaced persons. We feel that measures like opening of training centres for imparting semi-technical training advancing of short term loans with nominal or no interest and in deserving cases sanction of grants and giving preferential treatment in the matter of employment to lower scale posts should go a long way to ensure economic rehabilitation of displaced persons.

Financial Resources for Rehabilitation

9.59. We have called for the views of the State Governments as to the source from which the funds should be found for rehabilitation of the displaced persons. Most of the State Governments are in favour of charging cost of rehabilitation of displaced persons towards the cost of compensation payable to the persons interested. The Government of Rajasthan are of the view that there should be a separate budget for rehabilitating oustees to be

⁴³ Para 6-84 of the Report of the National Commission on Labour.

⁴⁴ Annexure II.

charged to the project and not to the acquisition cost. Some State Governments are, however, of the view that the cost of rehabilitation should be met from general revenues, and that it should not form part of the project as it would not be appropriate to inflate the cost of the project which may otherwise be quite heavy.

9.60. The Group of Experts who examined this question was of the view what it did not matter very much from which head of account the funds came. At another place the Group had stated that a policy decision on this issue would be sufficient at the level of the National Development Council to ensure necessary provision. The Group has further stated that in pursuance of such a policy decision—when a suitable scale has been prescribed, the requiring department of Government shall have to make provision and place the funds at the disposal of the State Government concerned for taking rehabilitative measures.

9.61. It was brought to our notice that in the case of the Hirakund project, the Chambal project (Gandhi Sagar Dam), the D.V.C., Ukai and Koyna

projects, the expenditure on rehabilitation was met from the project funds.

9.62. We have recommended earlier that betterment fee may be levied on the adjacent lands which have been benefited by the implementation of the developmental schemes. We feel that part of the cost towards rehabilitation should be met from the funds collected as a result of levying of betterment fees. Ordinarily, it is the project which directly derives the benefit as a result of acquisition of land but as a consequence thereof a number of families are uprooted. The rehabilitation cost should, therefore, form a part of the cost of the project which in many cases are developmental projects and are likely to give returns many times more than the cost incurred in setting them up. In case the project is not a productive one and it is not feasible to levy a betterment fee, or if the funds raised therefrom are not adequate to meet the costs of rehabilitation, the necessary funds should be found from the general revenues. As we have already pointed out, some State Governments are having their normal schemes of social welfare for giving doles etc. to the aged and the infirm. These schemes may also form part of such social welfare programmes of the State Governments.



ANNEXURE I

(Ref. Para 9.40)

A statement giving details of facilities/amenities provided by the various project authorities for resettlement of displaced persons

Project/State	Size of the plot Residential	Shop	Terms of allotment of plot	No. of new villages/colonies established	Construction assistance; materials	Loans/Grants	Grants for shifting of personal effects/animals	Cost of shifting construction materials
(1)	(2)(a)	(2)(b)	(3)	(4)	(5)	(6)	(7)	(8)
Bhakra and Nangal Project.	45' x 100' (i.e. 500 sq. yards)	25' x 50'	..	..	Arranged for slack coal for bricks, G.I. sheets iron bars; salvage of construction material of acquired houses allowed free.	Loans for housing were given on a large scale for the new town of Bilaspur. Those who accepted cash and resettled on their own were given grant of Rs. 125 to Rs. 150 per family,	Rs. 250 plus Rs. 15 as Rly./Bus fare per family for shifting plus freight charges for animals + Rs. 10 incidental per large cattle + Re. 1 per sheep-goat—Oustees who accepted compensation in cash were given Rs. 125 per family for resettling within 5 miles and Rs. 150 beyond 5 miles.	At concessional rate
Hirakud Project	..	Free	17 resettlement camps.	..	Building material was supplied at 60% of the normal royalty charged for forest material.	..	..	Free
Chambal Project	..	Free in lieu of sites already owned.	..	..	Allowed to take building material from acquired house free.	..	..	Part payment
Mahi Right Bank Canal Project.	..	On recovery or occupancy price.	..	..	..	..	..	..
Srisaigram & Pochampad Projects.	20 cents to those whose lands had been acquired. 5 cents to those whose lands had not been acquired.	..	Free	..	..	Those who did not settle in rehabilitation centres were given 50% of compensation for the house acquired as grant subject to a minimum of Rs. 500 and maximum of Rs. 2000 per family.	..	..

(1)	(2) (a)	(2) (b)	(3)	(4)	(5)	(6)	(7)	(8)
Ukai Dam Project	3 gunthas to agriculturists.	..	2 gunthas at concessional rates and one guntha at their option at market rate.	..	..	Salvaged material allowed free for houses valued upto Rs. 5000.	Rs. 4000 to Rs. 5000 as loan.	Fee for salvaged material for houses valued upto Rs. 5000. At 50% concession for houses valued for Rs. 5000 to Rs. 12000.
	1½ guntha to non-agriculturists.	..	At concessional rates.	..	..	At 5% of the depreciated value of the house in the case of houses valued between Rs. 5000—Rs. 8000; 7½% for houses valued between Rs. 8000 to Rs. 12,000; 10% for houses valued above Rs. 12,000.		Full rate for houses costing more than Rs. 12,000. Transport of household kits free.
Nagarjunasagar Project	10 cents to each family.	..	Free	..	Salvage of construction material of acquired houses allowed free.	Those who receive less than Rs. 500 for their house/property, are given ex-gratia payment upto Rs. 300.	..	Free transport. Cash doles are being paid at rates recommended by the Special Collector of the Project.
	Upto a maximum of 25 cents (including free grant of 10 cents)	..	On payment of cost.	..	In case of non-residential buildings removal of dismantled material was allowed on payment of 75% of the assessed cost.	Subject to the maximum amount of payment of Rs. 750	..	Salvaged material allowed at their own cost.
Pennar Dam Project	10 cents to each family.	..	Free	..	Salvage of construction material of acquired houses allowed free.	..	..	..
	Additional land to a reasonable extent subject to a maximum	..	On payment of cost—	..	..	..	..	..
			(i) Sites shall not be alienated for a period of 10 years.					
			(ii) Sites for shops to be constructed within 2 years.					

(1)	(2)(a)	(2)(b)	(3)	(4)	(5)	(6)	(7)	(8)
Rourkela Steel Plant	2903 plots measuring 40' x 60' each allotted.	..	Free	Two	Subsidy @Rs. 200 to Rs. 400 for construction of houses to each family.	Assistance to get loans from State Governments Housing Loan Schemes.	..	Free
Fertilizer Corporation of India (Trombay Unit).					Building material from acquired houses only.		Ex-gratia Rs. 30 per hutment dweller.	Free per household goods and building materials.
Meyveli Lignite Project	5 cents for kutcha acquired houses. 10 cents for pucca acquired houses.	..	..	Two	Free building material for acquired houses if vacated by prescribed date; otherwise on payment of 20% of their value.	..	..	Free
Heavy Electricals, Bhopal	2400 sq. feet to 4800 sq. feet.	..	Free (To 107 families).	..	..	Yes. (Rs. 80,000 total loan @Rs. 500 to Rs. 750 per family repayable in 20 years.)	..	..
Bokaro Steel Plant	Double of the plinth area acquired (as no agricultural land being allotted, (= 20 decimals per family on an average.)	..	On payment of 5% of the cost of acquisition.	5 colonies started so far.	Supply of building material on a no-profit no loss basis.			
Durgapur Steel Project.	..	..	On concessional rates.	One colony.	..	..	..	..
Heavy Engineering Corporation, Ranchi.	20 decimals per family.	..	On no profit no loss basis.	..	Supply of building material (Ballas, bamboos, timber, G.E. sheets, iron rods, bricks, tiles etc.) at no profit no loss basis from Central Purchase unit organised by the Director, Rehabilitation.	..	..	..

ANNEXURE II

(Ref Para 9-54)

Government of India directive about the principles to be kept in view by the Boards of Directors and Managing Directors/Chairmen of Public Sector Projects while making recruitment to posts within their projects

There is technically no restriction in the matter of recruitment to those units based on the areas from which the employees come. It will be of advantage to the units in various directions, if persons who come from areas near about the place of location of the project secure appointment to posts in the lower scales. In the case of all unskilled workers, even without any special effort they are generally drawn from the locality where the project is situated. Every effort should be made in such recruitments to give preference to persons displaced from the areas acquired for the project especially or Scheduled Castes and Scheduled Tribes (e.g. Adivasis). Next should be preferred those who, even if they come from some distance, have been or are about to be retrenched from other Government undertakings.

2. In the case of skilled workers, clerks and other non-technical staff whose scales are comparatively low, so long as the basic qualifications and experience are forthcoming, preference should be given in the order of priority mentioned in the previous paragraph.

3. In the case of the middle level technical and non-technical posts, having higher starting salaries equivalent to the Class I junior scale of the Government of India (Rs. 350-850), recruitment should be made on an All-India basis, merit and qualifications being the principal criteria. Complaints have sometimes been made in the past that local candidates do not receive a fair deal. Special care should be taken to ensure that there is no reasonable ground for any such complaint.

4. In the case of higher non-technical posts, e.g., top general management, finance and accounts, sales, purchase, stores, transport, personnel, management and welfare and town administration, carrying a salary of Rs. 600 and above, candidates available in the Industrial Management Pool should first be considered. Failing such candidates, there should be advertisements on an all-India basis. This does not, however, preclude considering candidates who may have applied on their own or may have been retrenched from other Government projects etc.

5. For the higher technical posts, the best qualified persons will have to be recruited, either by advertisement on an all-India basis or by personal contact.

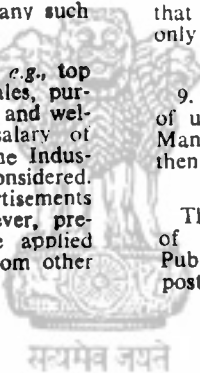
6. All vacancies of the kind referred to in paras 1 and 2 should be communicated to the Employment Exchanges close to the project. Advertisements, which are made in the papers should be in local languages and in the local newspapers. Such advertisements should specifically mention that preference would be given to persons who are registered in Employment Exchanges. All the applications received along with the list sent by the Employment Exchange should be screened and appointments made by Selection Committees specially set up for the purpose by each unit. These Selection Committees should include representatives from the State Government or their nominees.

7. The Selection Committees set up for recruitment to all other medium level or higher technical or non-technical posts should include at least one representative of the State Government, preferably a State Government official who is on the Board of Directors.

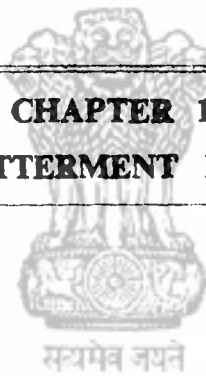
8. Representation for local interests in the shape of a State Government nominee etc.; as detailed above should also be provided for in any standing committee that may exist for the purpose and not confined to only special ad-hoc committees.

9. Where the exigencies of work require the making of urgent ad-hoc appointments, it will be open to the Managing Director to make such appointments and then inform the Selection or Standing Committees.

The above principles may be kept in view by Boards of Directors and Managing Directors/Chairmen of Public sector Projects while making recruitments to posts within their projects.



CHAPTER 10
BETTERMENT LEVY



INDEX

	PARAS No.
1. Meaning of the term 'betterment'	10·2 to 10·4
2. Betterment Levy under U. K. Land Commission Act.	10·5 to 10·11
3. Betterment Levy under Indian Statutes	10·12 to 10·25
4. Collection of Betterment Levy	10·26
5. Our Recommendations	10·27 to 10·30
6. Constitutional position regarding charging of betterment levy	10·31 to 10·34



10.1. Our terms of reference include the determination of the extent of responsibility of Government for rehabilitation of evicted families as a result of acquisition of land and the steps that may be taken for the discharge of this responsibility. In this context, we had, through a questionnaire, elicited views on the question whether any betterment levy be imposed on those properties, the value of which appreciate as a result of development activity and if so, what should be the form, extent of levy and measures to be adopted for collecting it.

Meaning of the term 'betterment'

10.2. The term 'betterment' is used both in a wide and a narrow sense. In its narrower sense, it indicates increase in the value of land due to the exercise of powers by acquiring bodies to take and use land for the purposes authorised by the Statute—such as increase in the value of surrounding property which may result from the construction of irrigation dams or the creation of a 'new town'.

In its wider aspect, it indicates an increase in land values whether resulting from Governmental action or from what are, sometimes, called general 'community influences' such as increase in population, changes in standards of habits of living etc.

10.3. The system of levying fee for the 'betterment' in its narrower sense was provided in the United Kingdom in various local and general Acts and is provided in India in some of the city improvement and development Acts, for instance, the City of Bangalore Improvement Act, 1945 (as amended by Mysore Act 3 of 1952), the Delhi Development Act, 1957 and the Madras State Housing Board Act, 1961.

10.4. The First, Second and Third Five Year Plans took into consideration the fact that the lands which are irrigated by major projects increase in value substantially and that it is certainly equitable that the individuals who derive this 'unearned' increment by the efforts of the community at large should be required to share this increment with the community and suggested levying of betterment fee based on the increase in the value of land as a result of the irrigation facilities provided by the Projects.¹ This principle was confirmed by the National Development Council more than once and in pursuance thereof legislation has been enacted in all the States except Uttar Pradesh, West Bengal and Jammu and Kashmir.²

Betterment Levy under U. K. Land Commission Act

10.5. The system of levying fee for the 'betterment' in its wider sense has been provided in the Land Commission Act, 1967 of the United Kingdom. The White Paper published by the Government of United Kingdom announcing its intention to introduce a Bill to establish a Land Commission and to provide for the betterment levy gives the necessary background on the subject. The following observations in the White Paper are noteworthy:

"For centuries the claim of private landowners to develop their land unhindered and to enjoy the exclusive right to profit from socially created values when their land is developed has been questioned especially when the land is sold to the community which itself has created the value realised. The view that control over development must be exercised by the community is not now seriously disputed and it is generally accepted that the value attached to land by the right to develop it is a value which has substantially been created by the community. A growing population, increasingly making their homes in great cities, has not only made effective public control over land indispensable; it has also made indefensible a system which allows landowners or land speculators wholly to appropriate the increases, often very large, in the value of urban land resulting either from Government action, whether central or local, or from the growth of social wealth and population."

"In 1942 the whole subject was authoritatively dealt with in the Report of the Expert Committee on Compensation and Betterment under the Chairmanship of Mr. Justice Uthwatt."

"The main recommendations of the Uthwatt Committee were implemented by the Labour Government in the Town and Country Planning Act, 1947*, which vested in the State all development rights in land. Anyone wishing to develop land had to recover the right to develop by payment of a development charge to the Central Land Board."

"The development charges were abolished by the Town and Country Planning Act, 1953."

"The 1953 Act, a stop-gap measure, was followed by the Town and Country Planning Act 1954 which removed the restriction on private sales of land so that those sales of land took

¹ First Five Year Plan, Paras. 58, 61 & 63, (Ch. XXVI).

² Second Five Year Plan, Para 85, Ch. XVII and Third Five Year Plan, Para. 22, Ch. XXIV. The examples of levy of betterment fee in case of land covered by the irrigation projects may be found in the Assam betterment fee and Mooring Tax (Dibrugarh) Act, 1953; The Andhra Irrigation (Levy of Betterment Contribution) Act, 1955.

*There are separate Town and Country Planning Acts for Scotland. Where necessary, references to these are inserted in the text.

place at market price. A two-price system was thereby created: prices paid when land with development value was sold privately were higher than those paid when such land was acquired compulsorily for public purposes. This two-price system was so clearly inequitable that the Government were forced to eliminate it and this they chose to do by the Town and Country Planning Act 1959 which restored market value as the basis for compensation on compulsory purchase."

"With the removal of restraints on the market in land for development, land with planning permission for development was fetching ever-increasing price. It was thought by the Government of United Kingdom that these prices placed a heavy burden on the financial resources of the public authorities buying land for their essential purposes. The two main objectives for enactment of the Land Commission Act in U. K. were:

- (i) to secure that the right land is available at the right time for the implementation of national, regional and local plans;
- (ii) to secure that a substantial part of the development value created by the community returns to the community and that the burden of the cost of land for essential purposes is reduced."

10.6. Under the Land Commission Act, 1967, the betterment levy is charged^a where the development value of land or part of it has been realised. There are six cases in which the development value or part is taken to be realised, the chargeable acts and events being (i) the conveyance on sale of the fee simple and the assignment of sale of a tenancy, (ii) the grant of tenancy, (iii) the start of a development case, (iv) the payment of compensation for an adverse planning decision, (v) the grant of an easement and the release of an easement or restrictive right, and (vi) other acts and events designated by regulations.^a

10.7. The levy is based on the net development value, the compensation or consideration as laid down by regulation. The prescribed rate of levy

is 40%. The Land Commission must be notified of chargeable acts and events, the procedure depending on which of the above cases is appropriate.^a

10.8. The procedure for assessing the levy is laid down, objections being referred to the Lands Tribunal.^a Provision is made for the method of paying levy and interest.^a Security may be demanded where payment is postponed or is by instalments.^a The levy is recoverable as a simple contract debt.^a Relief is given in respect of estate duty, capital gains tax and corporation tax¹⁰.

10.9. Local authorities and certain other public bodies, charities, statutory undertakings the National Coal Board and housing associations are exempted.¹¹ Other exemptions relate to development which closely follows a chargeable sale, assignment or grant of a tenancy, the erection of a single family house on land acquired before 23rd September, 1965 and the development of residential property where planning permission was in force on that day.¹² Further exemptions may be provided for by a ministerial order.¹³ There are penalties for starting development without notifying the commission, failing to notify a chargeable act or event or comply with a request for information or documents, and giving false information.¹⁴

10.10. In some of our statutes, the principles for determining market value of the land acquired have been prescribed in such a way that the owners of the land acquired are deprived of increases in the value of land between certain specified dates with the result that they do not get the market value as on the date of acquisition. For instance, (1) the Land Acquisition Act, 1894 has prescribed the date of section 4 notification for determining the market value; (2) the Maharashtra Regional and Town Planning Act, 1966 has prescribed the date of declaration of intention to make the scheme, which may be many years before the actual date of acquisition, as the date for determining the market value; (3) the Kerala Land Acquisition Act has prescribed (in the case of acquisition for projects) the date of declaration of project as the date for determining the market value with a proviso for payment of normal rise in value between such date and the date of Section 4 notification not exceeding 20% of market value on the date of declaration of

^a. Section 27 (2).

^a. This refers to cases not covered earlier which are made for valuable consideration and grants to a Government department, statutory undertakers or any other body a right to place, construct or maintain a main pipe, cable, wire or other apparatus in, on, over or under land.^a

^a. Land Commission Act, Sections 37-42.^a

^a. *Ibid*, Sections 44-49.

^a. *Ibid*, Sections 50-57.

^a. *Ibid*, Section 52.

^a. *Ibid*, Section 53.

¹⁰. *Ibid*, Sections 69-71.

¹¹. *Ibid*, Sections 56-59.

¹². Land Commission Act, Sections 60-62.

¹³. *Ibid*, Section 63.

¹⁴. *Ibid*, Sections 80-82.

project, if the total amount of this is less than the market value on the date of S.4 notification; (4) the Land Acquisition (M.P. Amendment) Act, 1959 (for Bhopal area) has prescribed 1st date of October, 1955 as the date for determining the market value with a proviso for payment of market value not exceeding 25% in lieu of rise in value between such date and the date of s. 4 notification, if the total amount of this is less than the market value on the date of s. 4 notification.

10.11. In the cases, where compensation is determined with reference to a date which is much anterior to the date of acquisition, the concept of betterment fee in the wider sense as in U.K. under the Land Commission Act may be irrelevant as the element of 'betterment' has already been taken care of. If the levying of betterment fee in its wider sense is to be provided, then the compensation to be paid must be on the basis of the market value as on the date of acquisition of the land.

Betterment levy under Indian Statutes

10.12. The system of levying betterment fees has been provided in some of the Indian Statutes relating to city improvements and development projects, for instance the City of Bangalore Improvement Act, 1945 (as amended by Mysore Act 3 of 1952); the Delhi Development Act, 1957; The Madras State Housing Board Act, 1961; and the Bombay Town Planning Act, 1955. A brief summary of these Acts would be helpful for understanding the concept of betterment fee and the methods adopted for its assessment, determination and recovery :

I. The City of Bangalore Improvement Act, 1945

Under Section 2 clause (1) of the Act, 'betterment fee' has been defined as under :—

'Betterment fee' means the fee payable under Section 18-A in respect of an increase in the value of land resulting from the execution of an improvement scheme.

Section 18-A makes provision for the payment of betterment fee as under:

- (i) When, by the making of an improvement scheme, any land in the area comprised in the scheme, which is not required for the execution thereof will, in the opinion of the Board, be increased in value, the Board, in framing the

scheme, may declare that a betterment fee shall be payable by the owner of the land or any person having an interest therein in respect of increase in value of the land resulting from the execution of the scheme.

- (ii) Such increase in value shall be the amount by which the value of the land, on the completion of the execution of the scheme, estimated as if the land were clear of buildings exceeds the value of the land prior to the execution of the scheme estimated in like manner, and the betterment fee shall be one third of such increase in value.

10.13. Procedure.—The procedure for assessing, determining and recovering the betterment fee has been laid down in the Act. The amount is assessed after giving the persons concerned an opportunity of being heard and such person must indicate within three months of the notice whether or not he accepts the assessment.¹⁸ If the assessment proposed by the Board is accepted by the assessee, it becomes final. If the proposed assessment is not accepted or the information whether or not the assessment is accepted is not given the matter has to be determined by the arbitrator.¹⁹ The arbitrator has to make the award under his signature and forward it to the Board²⁰ and communicate the substance of it to the parties concerned²¹. Any party aggrieved by the award including the finding on the costs may appeal to the District Judge within one month from the date of the communication of the award, and the decision of the District Judge thereon is final and conclusive and binding on all persons.²²

10.14. The Board has to fix the date by which the amount of betterment fee assessed is to be paid. If the amount is not paid by that date, an interest at the rate of four per cent per annum becomes payable on the outstanding amount.²³ The assessee may opt, by executing an agreement, to leave the outstanding payment as a charge on his interest in the land and pay in perpetuity interest on the assessed amount at the rate of four per cent per annum. However, the assessee may pay off the charge created, with interest, at four per cent per annum upto the date of such payment. Every payment due in respect of betterment fee and every charge created therefor is the first charge upon the interest of such person in such land notwithstanding anything to the contrary in any other law.²⁴ If the amount is not recovered, the Chairman of the Board may sell the interest of the person in the land by public auction after one month of giving of public notice of his intention to do so.²⁵

¹⁸. Section 18B(2).

¹⁹. Section 18B(4).

²⁰. Section 18C(3).

²¹. Section 18E(1).

²². Section 18C(3 & 4).

²³. Section 18F.

²⁴. Section 18G.

²⁵. Section 18H.

10.15. Broadly speaking, the provisions of the Delhi Development Act, 1957 and the Madras State Housing Board Act are on the same lines as those followed in the Bombay Act.

II. The Delhi Development Act, 1957

10.16. Section 37 to 40 of the Delhi Development Act, 1957, provide for the levying of betterment charges, procedure for assessment, determination, and payment thereof. The rate of the levy is fixed at 1/3 of the increase in value of the land. If the person concerned dissents from the assessment, the matter is required to be determined by arbitration.²² Any arrear of betterment charge is recoverable as an arrear of land revenue.²³ Sections 37 and 38 correspond in material respects to sections 18-A and 18-B of the City of Bangalore Improvement Act, 1945.

III. The Madras State Housing Board Act, 1961

10.17. Sections 73 to 78 of the Madras State Housing Board Act, 1961 so far as they provide for the levying of betterment fee, procedure for assessment, determination, machinery and payment thereof correspond in substance to Sections 18-A, 18-B, 18-C, 18-F, 18-G, 18-H and 18-J of the City of Bangalore Improvement Act, 1945 (as amended by Mysore Act 3 of 1952). The betterment fee is levied at the rate of 1/3 of the increase in value of the land. The Housing Board has further been empowered to levy betterment fee, with the previous sanction of the State Government and after serving notice on the concerned persons, in respect of any land which is adjacent to the area comprised in the scheme if such land will be increased in value consequent on the execution of a housing or improvement scheme in the area comprised in the scheme.²⁴

10.18. The State Government is empowered to constitute a tribunal to which, *inter alia*, the matters of levy and assessment of betterment fee are referred (S. 74(4)(5)). The Tribunal consists of one person who must be a judicial Officer not below the rank of a Subordinate Judge. The Tribunal has the same powers as are vested in a Civil Court under the Code of Civil Procedure,²⁵ 1908. The award of the Tribunal is final and not liable to be questioned in any Court of law.²⁶

IV. Bombay Town Planning Act, 1955

10.19. The Bombay Town Planning Act, 1955, is a typical instance of the levy of betterment fee in a manner which is different from the one adopted in the Acts discussed above. In these Acts, in making a town planning scheme the lands of all persons covered by the scheme are treated as if they are put in a pool. Town Planning Officer then proceeds to

reconstitute the plots for residential buildings and the reserve lands for public purposes. Reconstituted plots are allotted to the landholders. The reconstituted plots having regard to the exigencies of the scheme need not be of the same dimensions as the original land. Their shape and size may be altered and even the site of the reconstituted plot allotted to an owner may be shifted. The Town Planning Officer may lay out new roads, divert or close existing roads, reserve lands for recreation grounds, schools, markets, green belts and similar public purposes, and provide for drainage; lighting, water supply, filling up or reclamation of low-lying, swamp or unhealthy areas or levelling up of land so that the total area included in the scheme may conduce to the health and well-being of the residents. Since the town-planning scheme is intended to improve the sanitary conditions prevailing in a locality, the owners of plots are required to maintain the open land around their buildings. The object of the scheme being to provide amenities for the benefit of the residents generally, the area in the occupation of the individual holders of land is generally reduced, for they have to contribute out of their plots, areas which are required for maintaining the services beneficial to the community.

10.20. Under the Act, the Cost of the scheme is to be met wholly or in part by contributions to be levied by the local authority on each plot included in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of each plot.

10.21. The re-granting of titles in the various plots and reservation of lands for public purposes require financial adjustments to be made. The owner who is deprived of his land has to be compensated and the owner who obtains a reconstituted plot in surroundings which are conducive to better sanitary living conditions has to contribute towards the expenses of the scheme. This is because on the making of a town planning scheme the value of the plot rises and a part of the benefit which arises out of the unearned rise in prices is directed to be contributed towards the financing of the scheme which enables the residents in that area to more amenities, better facilities and improvements in their living conditions. For that purpose provision is made that the increment shall be deemed to be the amount by which at the date of the declaration of intention to make a scheme, the market value of a plot included in the final scheme, estimated on the assumption that the scheme has been completed, would exceed at that date, the market value of the same plot estimated without reference to improvements contemplated by the scheme.²⁷

²². Section 38(4).

²³. Section 40(2).

²⁴. Section 73(3).

²⁵. Section 79.

²⁶. Section 82(3).

²⁷. Section 65, Bombay Town Planning Act, 1955.

10.22. The difference between the total value of the plots included in the final scheme and the value of the original plots are required to be deducted or added as the case may be from or to the contributions leviable from such persons, each of such plots being estimated at its market value at the date of the declaration of intention to make a scheme or the date of notification without reference to improvements due to alterations of its boundaries.

10.23. It has been further provided that if the owner of an original plot is not provided with a plot in the final scheme or if the contribution to be levied from him under section 66 is less than the total amount to be deducted therefrom under any of the provisions of this Act, the net amount of his loss shall be payable to him by the local authority in cash or in such other way as may be agreed upon by the parties.

10.24. The provisions relating to payment of compensation and recovery of contributions are vital to the successful implementation of the scheme. The owner of the reconstituted plot who gets the benefit of the scheme must make contribution towards the expenses of the schemes, the owner who loses his property must similarly be compensated.

10.25. The rate of betterment fee levied under the various Town Improvement or Town Planning Acts passed by the various States ranges from one fourth to one half.¹⁰

Collection of Betterment levy

10.26. In U.K. the betterment levy is assessed and collected by the Land Commission and paid into the Exchequer. When the land is acquired by the Commission, the compensation for such land is paid after deducting therefrom the amount of betterment levy assessed in respect thereof.¹¹ On other acquisitions, however, the compensation is paid in full and the vendor will be liable to the Commission for the payment of the levy in the usual way. In India under the statutes which have provided for the levy of betterment fee, the fee is assessed and collected by the respective authorities separately and in case of arrears they recover them as arrears of land revenue. In the Madras Town Planning Act, where S. 25 has made betterment levy a charge on the

land, it was held by the Supreme Court that the deductions made on account of betterment levy in fixing amount of compensation payable were valid.

Our Recommendations

10.27. It will thus be seen that the concept of levying betterment fee is not new to this country. Most of the State Governments have already levied betterment fee on lands whose value has appreciated as a result of irrigation facilities provided by the projects undertaken in the Five Year Plans. Some of the Town Planning and Town Improvement Acts have also included provisions for the levy of betterment fee in the case of urban lands although some of these Acts follow the principles laid down in the Land Acquisition Act for the payment of compensation for acquisition of the land for town improvement or town planning. After having taken into account the various aspects, we recommend that the State Governments may levy betterment fee on the lands which have been benefited as a result of the implementation of the projects or development schemes initiated by the Government. The fees may be levied on such of the lands as are not covered by the existing laws levying such fees e.g., levy on irrigated lands or the lands covered under various Town Planning or Town Improvement Acts etc. We further recommend and emphasize that the amount recovered as betterment levy should be utilised primarily for the rehabilitation of uprooted landholders.

10.28. We would recommend to the State Governments that while examining the question of levying betterment fee in respect of lands covered by big projects, they should draw a distinction between the landowner whose land is acquired in part for the execution of the project and the owner who has not lost an inch of his land but has benefited as a result of increase in value of his land on account of the execution of the scheme. The land owner whose land is acquired in part for the execution of the project stands on a different footing vis-a-vis the owner who has not lost any land in the execution of the scheme but is none-the-less benefited as a result of the scheme. The former would receive compensation only on the basis of market-value which existed two years anterior to the date of publication of such notification together with

¹⁰. (i) The Betterment fee is levied at the rate of *one third* of the increase in the value of the land as a result of improvements undertaken under the following Acts also :

The City of Mysore Act, 1903, S. 18-A(2); the Delhi Development Act, 1957, S. 37(2) and the Madras State Housing Board Act, 1961, s. 73 (2).

(ii) The Betterment fee is levied at the rate of *one half* of such increase in value under the following Acts :

The Calcutta Improvement Act, 1911, S. 78A(2); the Madras Town Planning Act, 1920, S. 23; the Punjab Town Improvement Act, 1922, S. 50A(1); the Nagpur Improvement Trust Act, 1936, S. 69(2); Cawnpore Urban Area Development Act, 1945, S. 101; the Bihar Town Planning & Improvement Trust Act, 1951, S. 77 (b); the Bombay Highways Act, 1955, S. 43; and the M.P. Town Improvement Trust Act, 1960, S. 98(2).

(iii) The betterment fee is levied at the rate of *not exceeding one half* of such increases in value under the following Acts; The Jammu & Kashmir Town Planning Act, 1940, S. 19 and the Orissa Town Planning and Improvement Trust Act, 1956, S. 70(2).

(iv) The Betterment fee is levied at the rate of *one fourth* of such increase in value under the Rajasthan Urban Improvement Act, 1959, S. 62(2).

¹¹. S.73 (4 & 5) Lands Commission Act, 1967.

¹². Shri Rani M. Vijayalakshamma Rao Bahadur v. Collector of Madras, (1968) 2 S.C.J. 869.

an allowance for the normal rise in the prices of land subject to a maximum of 25%. It may be recalled that we have recommended that in the case of acquisition for a big project, the market value of the land covered by the project should be determined as on the date of the publication of the project notification which may take place two years prior to the date of publication of the notification under Section 4(1). Now, if there were a rise in the prices of lands (and the present trend seems to be in that direction) between the date of the declaration of the project and the date of Section 4(1) notification, the person whose land is partly acquired for the project may be deprived of compensation which would have been payable to him on the basis of market-value as on the date of publication of notification under Section 4(1), if the same land were acquired for public purposes other than the execution of a big project. This would create invidious distinction between the advantage gained by a landowner whose land has not been acquired at all and the loss suffered by a land-owner whose land has been partly acquired. The States should try to operate the laws in as equitable a manner as possible and we think that the rate of betterment levy should be lower in the case of such land owners whose land has been partly acquired vis-à-vis the persons whose land is not acquired at all but has been equally benefited by the scheme. If the same rate of betterment fee were levied on the two categories of the land-holders one whose land is not acquired at all, and one whose land is acquired in part—the latter would suffer doubly as he would be paid compensation less than the one payable in the normal case of acquisition where a small pocket of land is acquired for construction of a road, hospital, post office etc.

10.29. An illustration would make the position clear. It may happen that only 5 acres out of a piece of land admeasuring 10 acres which belong to 'A' would *inter-alia* be required for the execution of a big project, whereas the adjacent land of 'B' may not at all be required for the execution of the same. Now, if a notification declaring a project area were to be published, for example, on 1st January, 1967, when the price of land is Rs. 1,000 per acre, followed by a notification under Section 4(1), on 31st December, 1968 when the market value might be Rs. 1,500 per acre, 'A' will be entitled to compensation at the rate of Rs. 1,250 per acre under the scheme recommended by us—Rs. 1,000, being the market price, as on the date of the declaration of the project area, and Rs. 250 being the allowance for normal rise in price up to a maximum of 25%. Had the market value been determined on the date of publication of notification under Section 4(1), 'A' would have got compensation at the rate of Rs. 1,500 per acre instead of Rs. 1,250 per acre. We feel that while fixing the rate of betterment fee in respect of the remaining 5 acres of land of 'A', which has not been acquired, the appropriate Government should take into account the fact that he has already been deprived of compensation to the extent of Rs. 250 per acre which he would have got if the compensation were determined on the basis of market value as on the date

of publication of notification under Section 4(1) in the normal case of acquisition. On the other hand, 'B' whose land is not acquired at all for the execution of the scheme but whose land has increased in value as a result of it would not suffer a loss of this kind. It is, therefore, suggested that the rate of betterment fee should be lower in the case of 'A' than in the case of 'B'.

10.30. We may again note here that in determining the amount of compensation of the land acquired, we have not recommended the adoption of the principle of set-off in cases where an adjacent land (which is not acquired) of the same owner is benefited as a result of increase in the value of the land by virtue of the scheme of the acquiring authority. In the case of a set off the persons whose adjacent land has been acquired would have been adversely affected for more than the other persons to whom the levy would be applicable. It would also create an invidious distinction that while those who have been deprived of part of their land would be charged in the deal itself the others who have lost not an inch of land would gain all the advantages of betterment and can also use all methods legal and illegal to delay payment and perhaps in some cases even escape any payment. The agency to collect betterment levy should therefore adopt the same process against all and there should be no deductions at the source in those cases who were also the unfortunate ones who lost part of their land as well.

Constitutional position regarding charging of betterment levy :

10.31. We have kept the constitutional position in mind while recommending that legislation in regard to betterment levy should be undertaken by the States. In the United Kingdom, Parliament being a sovereign law making body, can enact legislation not only with regard to acquisition of land and compensation therefor but also for recovery of betterment levy. Different considerations, however, arise under our Constitution with its distribution of powers between the Centre and the States. Though 'Acquisition of property' is in the Concurrent List (Item 42), 'Land (item 18), 'Land Revenue' (item 45) and 'Taxes on Lands and Buildings' (Item 49) are in the State List. Our Parliament is, no doubt, competent to enact legislation providing that the specified percentage of increase in the value of the adjacent (unacquired) land of the same owner likely to accrue from the actual or prospective development under the acquiring authority's scheme shall be set-off against the compensation payable for the land acquired. Such a provision in the law pertains only to a specification of principle of compensation. However, a tax in the form of betterment levy, which would be a tax on land or/buildings, would not fall within the pith and substance of legislation relating to the acquisition of land.

10.32. While Entry 49 of the State List of VII Schedule of our Constitution relates to 'Taxes on land and building Entry 86 and 87 in the Union

List relate to the Taxes on the capital value of assets, exclusive of agricultural land of individuals and companies; estate duty in respect of property other than agricultural land'. The question whether the State Governments have powers to impose taxes on land and buildings in view of the said entries in the Union List was considered by the Supreme Court in a recent case. The Court held that there was no conflict between these entries in the Union List and the State List and that there was nothing to preclude the State Legislature from taxing capital value of lands and buildings under Entry 49 of the State List.²²

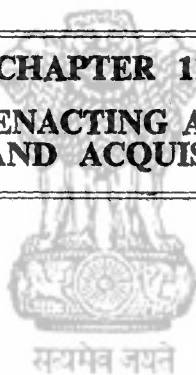
10.33. Imposition of a betterment levy appears entirely to be within the ambit of Entry 49 of the State List and within the competence of the State Legislature and does not in any way encroach upon the field of legislation of Entry 86 of the Union List.

10.34. In view of the above position of the law, it will not be feasible to have Parliamentary legislation prescribing uniformity in the rate of betterment levy and ancillary matters, such as procedure for assessment, determination and recovery thereof. The matter, must, therefore, be left to the States.

²². Assistant Commissioner of Urban Lands vs. The Buckingham & Carnatic Co. (Civil Appeals No. 4 to 23 of 1969 decided on 11-4-1969). In this case, the court further held that Entry 49 contemplates a levy of tax on lands and buildings or both as units and that taxes on lands and buildings should be considered as taxes on lands and taxes on buildings.



CHAPTER 11
FEASIBILITY OF ENACTING A UNIFORM LAW
ON LAND ACQUISITION



INDEX

	PARA No.
1. Brief History of legislation	11.2 to 11.4
2. Laws passed by the States	11.5 to 11.7
3. Legislative power for compulsory acquisition	11.8 to 11.12
4. Our recommendations on extent of the Act.	11.13
5. Views of State Governments and the public on Uniformity of Law	11.14
6. Views of the Law Commission	11.15
7. Our view.	11.16
8. Views of organisations etc.	11.17
9. Application of uniform principle for determining compensation in case of slum clearance schemes	11.18 to 11.19
10. Principles of Compensation under Central Acts.	11.20
11. Diversity of provisions under State Acts for acquisition for specific purposes	11.21 to 11.24
12. Whether Parliament can legislate on Land Acquisition for objects specified in the State List	11.24 (a) to 11.29
13. Our Recommendations	11.30



Feasibility of Enacting a Uniform Law on Land Acquisition

11.1. The fifth term of reference requires us to examine the feasibility of enacting a uniform central law for 'land acquisition' which may be applicable to the whole of the country although 'land acquisition' is in the Concurrent List of our Constitution. The Central Land Acquisition Act, 1894, is not applicable to the whole of India. There are Acts of the Union and the States in which provision is made for acquisition of land though these Acts do not deal with acquisition as such directly. We have, therefore, to consider the question whether it is possible to have one law on the subject of land acquisition operating throughout the country irrespective of the purposes for which acquisition is sought to be made.

Brief History of Legislation

11.2. The history of legislation in India in respect of acquisition of property has briefly been traced in the Tenth Report of the Law Commission on the Law of Acquisition and Requisitioning of Land.¹ It is not necessary for our purpose to examine the defects in the enactments which were in force prior to the Land Acquisition Act, 1894. The first enactment on the subject of land acquisition for the whole of British India was Act VI of 1857 which was replaced by Act X of 1870. The Land Acquisition Act, 1894 was eventually passed when the Act of 1870 was also found to be defective in various respects. This Act applies originally only to British India. The native States passed their own Acts, for example the Hyderabad Land Acquisition Act, 1309 Fasli (1899) the Mysore Land Acquisition Act, 1894, the Travancore Land Acquisition Act, 1089 (1914), the Bikaner State Land Acquisition Act, 1943, the Jaipur Land Acquisition Act, 1943, and the Marwar Land Acquisition Act, 1947.

11.3. Under the Government of India Act, 1919, and the Government of India Act, 1935 (item 9 of list II of the Seventh Schedule), the Provinces had power to legislate with respect to compulsory acquisition of land. In exercise of this power, some of the Provinces amended in certain respects, the provisions of the Act of 1894. By the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, sub-section (2) of Section 1 of Land Acquisition Act was amended by substituting the words "all the Provinces of India" for the words "the whole of British India".

11.4. In the Constitution of India, as originally enacted, the States and their territories were specified in Parts A, B and C of the First Schedule to the Constitution and the Territory of India consisted *inter alia* of the States. After the Constitution

under the Adaptation Order of 1950, for the words "the Provinces of India" which occurred in Section 1(2) of the Land Acquisition Act, the words "the whole of India except Part 'B' States" were substituted. The Part B States Laws Act, 1951 (III of 1951) did not extend the Land Acquisition Act to Part B States. Under the Adaptation of Laws No. 2 Order, 1956, which was promulgated after the States Reorganisation Act, 1956, for the words "except Part B States", the words "all the territories which, immediately before the 1st November, 1956, were comprised in Part 'B' States", were substituted. Section 1(2) of the Land Acquisition Act as amended upto date provides that the Act extends to the whole of India except the territories, which immediately before the 1st November, 1956, were comprised in Part 'B' States. Hyderabad, Jammu & Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States' Union, Rajasthan, Saurashtra, and Travancore-Cochin, were the erstwhile Part 'B' States. The Part 'B' States had laws of their own with regard to land acquisition. In some of the Part 'B' States, such as Rajasthan, there was no unified law relating to the land acquisition, as some of the Covenanted States had their own land acquisition Acts,—e.g. the Bikaner State Land Acquisition Act, 1943, the Jaipur Land Acquisition Act, 1943, the Marwar Land Acquisition Act, 1947—while others had no such specific law. Provisions relating to the acquisition of agricultural land in certain circumstances were also embodied in the Tenancy Acts of some of the Covenanted States, such as Jaipur and Jodhpur. As the necessity for having a unified law for Rajasthan for the acquisition of land was felt, the Rajasthan Land Acquisition Act, 1953, was passed and the same extends to the whole of the State of Rajasthan.

Laws passed by the States

11.5. Other States to which territories comprised in the former Part 'B' States were transferred, have since enacted legislation providing, as far as practicable, for uniformity in the provisions of the Land Acquisition Act in its application to the whole of the concerned State. In this context, reference may be made to the Land Acquisition (Andhra Pradesh Extension & Amendment) Act, 1959; the Kerala Land Acquisition Act, 1961; the Land Acquisition (Mysore Extension & Amendment) Act, 1961; the Land Acquisition (Maharashtra Extension & Amendment) Act, 1964; and the Land Acquisition (Gujarat Unification & Amendment) Act, 1963. The Hyderabad Land Acquisition Act, 1309, Fasli, stands repealed in regard to the Hyderabad area transferred to the States of Andhra Pradesh, Mysore, and Maharashtra.² The Travancore Land Acquisition Act, XI of

¹. See paras 2 to 8, pages 2 to 4 of the Report.

². See Land Acquisition (Andhra Pradesh Extension and Amendment) Act, 1959—(Andhra Pradesh Act XX of 1959 Section 10; Land Acquisition (Mysore-Extension and Amendment) Act, 1961 (Act No. 17 of 1961—Section 2) and the Land Acquisition (Maharashtra Extension & Amendment) Act, 1964, Section 2(b).

1089 and the Cochin Land Acquisition Act, II of 1970, have been repealed by the Kerala Land Acquisition Act, 1961. On the commencement of the Land Acquisition (Gujarat Unification & Amendment) Act, 1963, the Land Acquisition Act, 1894, (Adaptation and Application) Ordinance, 1948, as in force in the Saurashtra area of Gujarat immediately before such commencement also stands repealed.¹ The laws relating to Land Acquisition as such now in force in various States can broadly be placed in two categories as under :—

- (i) The Central Land Acquisition Act, 1894, as amended from time to time by the provinces and States by virtue of the power vested in them under the Government of India Acts and the Constitution;
- (ii) Self-contained Land Acquisition Acts passed by the States, with the assent of the President, after the commencement of the Constitution.

11.6. A comparative analysis of the State Amendments to the Land Acquisition Act, 1894, has been made in Appendix 11 of this Report. Table I to that Appendix indicates the State Acts by which the Central Land Acquisition Act stands amended in respect of the State concerned. A summary of the provisions of the Land Acquisition Act as in force in the various States is also given in the form of a narrative in Appendix 11.

11.7. The Rajasthan Land Acquisition Act, 1953, the Kerala Land Acquisition Act, 1961, and the Nagaland (Requisition & Acquisition) Act, 1965, are examples of the self-contained Acts of the States relating to Land Acquisition. The provisions of these Acts are different in some respects from those of the Central Acts and would prevail in the State in so far as they are repugnant to the provisions of the Central Act on the same subject.²

Legislative power for compulsory acquisition

11.8. The power to legislate for compulsory acquisition of property was originally distributed under three entries; Entry 33 List I—"Acquisition or Requisitioning of property for the purpose of the Union"; Entry 36 of List II—"Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of Entry 42 of List III"; and Entry 42 of List III—"Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given". By the Constitution (Seventh Amendment) Act, 1956, which came into force on November 1, 1956, Entries 33 of List I and 36 of List II were deleted from the Seventh Schedule and Entry 42 of List III was amended and now reads—"Acquisition and requisitioning of property". The effect of that amendment is that the power of acquisition and requisitioning of property falls in the Concurrent List. Parliament and the

Legislatures of the States have thus power to make laws with respect of this matter by virtue of Article 246(2) of the Constitution.

11.9. Article 254 of the Constitution lays down the principle for resolving any inconsistency between laws made by Parliament and laws made by the State Legislatures in respect of matters specified in the Concurrent List. Article 254(2) runs as follows :—

"Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State."

However, the proviso to Article 254(2) empowers Parliament to enact, at any time, any law with respect to the same matter, including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

11.10. It is thus possible for Parliament to vary or repeal the law made by the Legislature of any State and to enact only one uniform piece of legislation on acquisition of land in conformity with our recommendations, and the same can be extended straightaway to the whole of India except the States of Jammu & Kashmir and Nagaland.

11.11. As already pointed out, Jammu & Kashmir was included as a Part 'B' State in the First Schedule of the Constitution as originally enacted. Moreover, this State enjoys a special position under the Constitution. Entry 42 of the Concurrent List which (read with Art. 246(2) of the Constitution) empowers both the Parliament and the State Legislature to legislate on acquisition and requisitioning of property is not applicable to the State of Jammu & Kashmir, which has its own Act, namely, the State Land Acquisition Act, 1990 (1934 A.D.) (Act X of 1990). The only Article of the Constitution which on their own specific contents apply to the Jammu & Kashmir State are Articles 1 and 370. The application of the other Articles has to be determined by the President in consultation with the Government of the State. In exercise of the power conferred by clause (1) of Art. 370 the President with the concurrence of the Government of the State of Jammu & Kashmir has made an Order known as the Constitution (Application to Jammu & Kashmir) Order, 1954. This order specifies the matters with respect to which the Union Parliament would be competent to make laws for Jammu & Kashmir. It would be seen from this order that entry 42 of the Concurrent List is not made applicable to the State of Jammu & Kashmir. The result is that, as the matter stands at present, Parlia-

¹ See the Land Acquisition (Gujarat Unification & Amendment) Act, 1963—Gujarat Act No. 20 of 1965—Sec. 25 (1).

² This is the effect of Article 254(2) of the Constitution.

ment has no power to extend the operation of the Land Acquisition Act to the State of Jammu & Kashmir. However, it is open to the President with the concurrence of the Government of the State to make entry 42 applicable to the State of Jammu & Kashmir, and in that event Parliament can extend the application of the Land Acquisition Act to the State.

11.12. The Central Land Acquisition Act, 1894, has ceased to apply to the State of Nagaland. However, the corresponding Act, now in force in the State of Nagaland, is the Nagaland Land (Requisition and Acquisition) Act, 1965. Article 371-A of the Constitution provides *inter alia*, that no Act of Parliament in respect of ownership and transfer of land and its resources shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a Resolution so decides.

Our recommendations on extent of the Act

11.13. We are of the view that the law of Land Acquisition should be made applicable to the whole of India including the States of Jammu & Kashmir and Nagaland after complying with the necessary constitutional formalities in respect of these two States, for we find all reasons in favour of this proposition and none against it.

Views of State Governments and the public on uniformity of law

11.14. The State Governments except those of Haryana and Mysore are not in favour of enacting an uniform law on the subject. They are of the view that they should have powers to enact special acquisition laws in respect of subjects exclusively in the State List with a view to meeting their specific needs taking into account the local requirements. The State Governments of Haryana and Mysore, have, however, favoured enactment of uniform law on land acquisition. On the other hand the individuals and organisations who have appeared before us, by and large, are in favour of having a uniform law on land acquisition applicable to all types of acquisition.

Views of the Law Commission

11.15. While emphasising the need for uniformity in the matter of legislation on the subject of acquisition and requisitioning of property, the Law Commission had stated that the rights and liabilities of citizens in one State should not materially differ from those of another in respect of acquisition and requisitioning of property. It is for this reason that the laws on the subject were consolidated in the draft Bill proposed by the Commission.

Our view

11.16. We endorse the view of the Law Commission that the rights and liabilities of citizens of one State should not materially differ from those of another in the matter of acquisition of land. The taking of land causes the same hardship to the owner and the object for which it is required can have

no bearing in determining its value. The existence of public purpose is a condition precedent in all types of acquisition of land and as such the compensation payable for acquisition of any kind should as far as possible be on an uniform basis. While making our recommendations for determining the amount of compensation payable for the land acquired by the State, we have tried to strike a balance between the rights of the individual and of the community. We are of the view that the principles of compensation and the time limits for completion of the acquisition proceedings suggested by us should be made applicable to all cases of acquisition of land irrespective of the object for which the acquisition is sought to be made. A single and simple piece of legislation relating to acquisition of land would go a long way in avoiding confusion in the mind of the public with regard to the rights possessed by them in this regard, and will also remove a temptation from before the acquiring authority of preferring to adopt that procedure which is more favourable to their designs but far more injurious to the interests of the land holder.

Views of Organisations etc.

11.17. It would be pertinent to refer here to some of the views expressed by certain organisations on the subject of uniformity. For example, the Neyveli Lignite Corporation Limited, have stated that there would appear to be no need for any difference in regard to the principles and proceedings for acquisition with reference to the purpose except that the urgency provisions dispensing with enquiry under Section 5 and possession in anticipation of proceedings under Section 17 need be confined only to the really emergent requirements which can possibly be specified. Similarly, the Madras Port Trust, while advocating the need for uniformity, has observed as follows:—

“Broad principles must be laid down by the Central enactment itself, and the local amendments by the concerned States should conform to such principles. This will obviate the different types of enactments now existing for land acquisition. The Madras enactment relating to Slum Clearance has hit owners of land badly. Under the Madras enactment, the determination of the value of lands in the slum area and the procedure for fixing the market value and fixation of compensation, are so low that it is not worth anything to the owner of such land.”

Application of uniform principle for determining compensation in case of slum clearance schemes

11.18. We find that different scales of compensation have been prescribed by the Slum Areas Improvement and Clearance Acts which are in force in certain Union Territories and the States. Compensation in these Acts is based on the capitalisation of net or gross average income derived from the land. While the Andhra Slum Improvement (Acquisition of Land) Act, 1956, awards compensation equal to 12 times the net average annual income, the compensation awarded under the Madras

Act is five times the net average annual income during the period of 5 consecutive years preceding the date of publication of notice of acquisition. The Slum Areas (Improvement and Clearance) Act, 1956, which is in force in certain Union Territories including Delhi, awards compensation which is equal to 60 times the net average monthly income actually derived from the land including any building thereon during the period of five consecutive years immediately preceding the date of the publication of the notice of acquisition.

11.19. It is true that the slums are invariably overcrowded. We agree that the slums are a menace to the safety, health and morals of the inhabitants and it is of imperative necessity that improvements in, and clearance of, the slum areas should be taken in hand by the State. It is necessary that under the Slum Improvement and Clearance Act, Government should have the necessary powers for carrying out the requisite improvements as well as acquisition or demolition of slum properties. We are, however, of the opinion that when land is sought to be acquired for clearance of slums, the persons interested in land should also get a better deal than under the existing laws in force in the various States and certain Union Territories. While we agree that the basic principle governing the compensation to be paid for slum property is that the acquiring authority should not, where the property is unfit for human habitation and dangerous to the health of the inhabitants of the area, pay for any value which is not rightly due to the owner. It is for this reason that we have recommended the adoption of Rule 4 of Section 5 of the U.K. Land Compensation Act, 1961, which provides that, in assessing compensation, no account should be taken of any increase in the value of the land due to its use in a manner which is detrimental to the health of the occupants or to the public health. Reading this rule together with the rule of awarding compensation on the basis of market-value as on the date of notification under Section 4(1), we think that the courts would not award an amount of compensation greater than the one which would be justly due to the slum owner. Government is not, therefore, likely to suffer much by applying the uniform principles of compensation, recommended by us, even to the acquisition of slum property.

Principles of compensation under Central Acts

11.20. Apart from the Central Land Acquisition Act, 1894, there are other statutes passed by the Central Legislature, Parliament, some of which adopt the same principles of compensation as are prescribed in the Land Acquisition Act, 1894.¹ On the other hand, there are other Central Acts which prescribe different principles for determining the amount of compensation for acquisition of land. In this context, reference may be made to the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act 30 of 1952), the Defence of India Act,

1962 which has since expired, the Slum, (Improvement and Clearance) Act, 1956, the Coal Bearing Acts (Acquisition and Development) Act, 1957, and Resettlement of the Displaced Persons (Land Acquisition) Act, 1948. A summary of the principles of compensation prescribed by these Acts is given in Annexure 1.

Diversity of provisions under State Acts for acquisition for specific purposes

11.21. A large number of enactments relating to acquisition of land have also been passed by the State Legislatures. Apart from the Acts which directly relate to land acquisition as such, there are many other enactments which contain provisions permitting Government to acquire land for specific purposes such as rehabilitation of displaced persons, town planning improvement, planned development of industries, implementation of municipal and housing schemes etc. There is a diversity in these laws with regard to the principles for the determination of the compensation as well as the agency for determining the same. While some of the Acts have adopted the principles and procedure contained in the Land Acquisition Act, 1894, other statutes have introduced material alterations therein. The main points of difference between the Central Land Acquisition Act and these Acts are as follows:—

- (1) The inclusive definition of public purpose has been enlarged to cover other cases for which acquisition is often made by the States.
- (2) The material date for the determination of the market-value of the land has been altered from the date of the publication of the notification under Section 4(1) to the date of publication of the declaration under Section 6 or of the scheme or plan for development of towns and industries.
- (3) In some Acts, compensation is awarded on the basis of market-value as on the date of publication of notification under section 4(1) or, on a specified anterior date, whichever is less. In some Acts, a certain percentage of increase in value from the specified anterior date upto the date of publication of notification under Section 4(1) is given. On the other hand, there are some other acts which award compensation on the basis of capitalisation of the net average income derived from the land.
- (4) In determining market-value, certain Acts exclude the potential value in whole or in part. In other words, compensation is paid on the basis of existing use of land on the material date for determining compensation. Some of the Acts exclude from valuation some of the more substantial values namely those attributable to

¹ The Land Acquisition (Mines) Act, 1885 (18 of 1885) S. 6; the Indian Tramways Act, 1886 (11 of 1886) S. 7(3); the India Electricity Act, 1910 (9 of 1910) S. 57(ii); the Indian Forest Act, 1927 (16 of 1927) S. 11(3); the Damodar Valley Corporation Act, 1948 (14 of 1948) S. 50; the Oil and Natural Gas Commission Act, 1959 (43 of 1959) S. 24; the Delhi Development (Amendment) Act, 1963 (56 of 1963) S. 9 substituting S. 15 and deleting S. 16 of the Principal Act.

special suitability or adaptability of the land in certain cases. The result is that a part of the substantial value is excluded.

- (5) Under some Acts, the payment of the allowance for compulsory acquisition (i.e. solatium) is abolished, while in others the amount of solatium is reduced.
- (6) Some Acts provide that in assessing compensation, no account shall be taken of any increase in the value of the land due to its use in a manner which is detrimental to the health of the occupants or to the public health.
- (7) Some Acts provide for the appointment of a special Tribunal for the determination of the compensation. Though an appeal from the decision of the Tribunal is provided for, the scope of the right of appeal is limited.
- (8) Certain Town and Country Planning Acts provide for a long period for completion of acquisition proceedings by or for commencement of acquisition proceedings from the date of coming into force of the development plan.

11.22. With regard to the definition of public purpose, we have already taken note of the various amendments made by the States and have proposed a comprehensive definition of that expression. We have also recommended the adoption of Rule 4 of Section 5 of the U.K. Land Compensation Act, 1961, which provides that in assessing compensation, no account shall be taken of any increase in the value of the land due to its use in a manner which is detrimental to the health of the occupants or to the public health, etc. In regard to other matters, we have made appropriate recommendations.

11.23. It has already been noticed that there is a good deal of diversity in regard to the principles of compensation dependent upon the object for which the acquisition is sought to be made. A list of enactments permitting Government to acquire land for specific purposes such as town planning and improvements etc. which adopt the principles of Sections 23 and 24 of the Central Land Acquisition Act, is given in Annexure II. Annexure III gives a list of enactments which adopt the principles of the said sections subject to modifications and additions, when acquisition is sought to be made for the aforesaid specific purposes. A comparative analysis of the modified and additional principles of compensation for acquisition for such specific purposes has been made in Annexure IV.

11.24. We have already recommended that there should be uniformity in the law relating to the acquisition of land throughout the country and we feel that the law should not be different when the

acquisition is sought to be made for different objects.

Whether Parliament can legislate on Land Acquisition for objects specified in the State List

11.24(A). In this connection, it is necessary to consider whether having regard to the provisions of our Constitution, there would be any difficulty in applying the provisions of the parliamentary legislation on land acquisition also to cases governed by the State Acts which do not relate exclusively to acquisition of property. The Law Commission, which considered this question pointed out that for example, the Calcutta Municipal Act, 1951, is a piece of legislation which, it may be urged, is exclusively within the State List though that Act has incorporated in it, in a modified form the provisions of the Land Acquisition Act. The Commission observed that applying the doctrine of pith and substance, it may not be possible to assert that such a piece of legislation is one with respect to the acquisition of land, though it contains provisions relating to its acquisition. The Commission therefore expressed a doubt whether the provisions relating to land acquisition such as those in the Calcutta Municipal Act, 1951, could *pro tanto* be replaced by parliamentary legislation.¹

11.25. The Commission was aware that this would leave matter in a very unsatisfactory situation in as much as it would result in the position that if the object of acquisition is different, different principles of valuation of land can be applied and different tribunals could be approached for the assessment of compensation. In conclusion, the Commission observed as follows:

"If that be the true legal position, the difficulty can be solved only by persuading the States to conform, as far as possible, to the law relating to the acquisition of land enacted by Parliament. Another solution probably lies in the States requesting Parliament to legislate for them under Article 252 of the Constitution. Whatever be the method adopted, it is very desirable that there should be uniformity in the laws relating to acquisition of land throughout the country".²

11.26. In our view, there would be no difficulty in applying the provisions of the Parliamentary Legislation on land acquisition also to cases governed by the State Acts which did not relate exclusively to acquisition of property. The view of the Law Commission is based on the doctrine of pith and substance, the exact scope of which has been clarified by the Supreme Court in the recent case of the *State of Gujarat v. Shantilal Mangaldas and Others*.³ In this case, Justice Shah speaking for the court has observed that the doctrine of pith and substance is applicable in determining whether a statute is

¹. See Tenth Report of the Law Commission on the Law of Acquisition and Requisitioning of Land Para 12, pages 5-6.

². See para 13, page 6 of the Tenth Report of the Law Commission on the Law of Acquisition and Requisitioning of land.

³. Civil Appeal No. 1377 of 1968 decided on 13-1-1969.

within the competence of the legislative body especially in a federal set up where there is a division of legislative powers, but it is wholly irrelevant in determining whether the statute infringes any fundamental rights.

11.27. In the case cited above, the counsel appearing on behalf of the State of Gujarat contended that the Bombay Town Planning Act No. 27 of 1955 was not a law relating to acquisition of lands but a law dealing with health and public sanitation, for it was enacted with the object of improving the health of the public and on that account did not fall within the terms of Article 31(2) of the Constitution. In this case, the counsel had urged that the object of the Town Planning Act, in pith and substance, was to facilitate planned development to ensure healthy surroundings to the people living in a congested locality and to provide them with sanitation and other urban facilities conducive to healthy living, and on that account it was an Act falling within Entry 6 of the State List of the Schedule—"Public Health and Sanitation" and Entry 20 of the Concurrent List—"Economic and Social Planning". While negating the contention that the law was not a law for compulsory acquisition of land, the court observed that the competence of the Legislature to enact legislation on the subject matter of the Act and for the object intended to be served thereby are irrelevant in determining whether any fundamental right of a person is infringed by the impugned Act. In the course of the Judgment, the Court further pointed out that the Bombay Town Planning Act expressly provided that the ownership in the lands required by the local authority for public purposes, shall, unless it is otherwise determined in such scheme, vest absolutely in the local authority free from all encumbrances and that, therefore, the Act was a law for compulsory acquisition of land involving transfer of ownership by a law from private owners to the local authority. In arriving at this conclusion, the court also relied on its earlier decision in *Deputy Commissioner and Collector, Kamrup and others vs. Durganath Sharma*¹⁰, where it was held that the Assam Acquisition of land for Flood Control and Prevention of Erosion Act VI of 1955 was a law for acquisition of land, though for prevention of danger to life and property and that such an acquisition can't be made under a law coming within the purview of Article 31(5)(b)(ii) without compensation.

11.28. It would thus be seen that any Act passed by the State Legislature on a matter within the State field will have to comply *inter alia* with clauses 2 and 3 of Article 31 if the law contains provisions for expropriation of property. Entry 42 in the Concurrent List and Clauses 2 and 3 of Article 31 operate in the same field of legislation. The former enunciates the content of the legislative power and the latter puts restraints upon the exercise of that power. There may not be much difficulty in the State Law satis-

fying the requirements of the provisions of Articles 31(2) if the compensation provided by the Law is not illusory and the same is based on principles which are not irrelevant but effective control can be exercised by the President under Article 31(3) of the Constitution for ensuring uniformity. Article 31(3) provides that no law as is referred in clause (2) of Article 31, made by the Legislature of a State shall have effect unless such a law having been reserved for the consideration of the President, has received his assent.¹¹ Clause (3) apparently provides for a safeguard against any abuse on the part of the Legislature of a State, say, in the form of a "hasty and unjust expropriatory legislation" and also indirectly helps to some extent to ensure a uniformity of legislation in the States with regard to the compulsory acquisition or requisitioning of property. Evidently, the object of Article 31(3) is that in the matter of social ownership of property all States should follow only one yardstick in conformity with the policy of the Union Government. We are of the view that the provisions relating to acquisition of land contained in the Central as well as the States Acts should follow a uniform pattern with regard to certain essential matters such as principles of compensation and time limits for completion of the acquisition proceedings, irrespective of the object of acquisition to be served by the acquisition whether such object relates to a matter falling within the Union List or the State List. The principles of compensation and time-limits should not be different from those recommended by us simply because the objects of acquisition happens to be town planning/improvements, development of industries, slum clearance or execution of projects and housing schemes etc.

11.29. As the President exercises his authority with the advice of the Union Ministry, it would be open to the Ministry concerned to recommend to the President to withhold his assent to the State law providing for acquisition if that law differs in material respects, i.e. principles of compensation and time-limits for completion of acquisition proceedings from the parliamentary legislation in conformity with our recommendations. The observations of the Supreme Court in the *State of West Bengal v. Union of India*¹¹ in which the right of the Union of India to acquire property vested in a State was upheld, fortify the view taken by us. In this case the Court observed that the power of Parliament to pass a law for the acquisition of property under Entry 42 of the Concurrent List was unrestricted subject to the express provisions of the Constitution, and to imply restraint on that power on the ground of absolute sovereignty of the State was not warranted by the scheme of our Constitution. The contention that under Article 254(2), read with Entry 42 of the Concurrent List of the Seventh Schedule of the Constitution, the State Legislature would pass a law with the assent of the President, to re-acquire property acquired by

¹⁰. (1968) 1 SCR 561.

¹¹. The proviso to Article 31-A similarly requires laws made by the Legislature of a State in pursuance of that article to be reserved for the consideration of the President and receive his assent, to be valid.

¹². 1964 (1) S.C.R. 371.

the Union was dismissed by the court as outside the realm of practical possibility. The Court pointed out that the assent of the President would be given only on the advice of the Union Ministry and that if Parliament had passed a law authorising acquisition of the property vested in the State, and if the Union Executive wanted to acquire such property, it must follow that the President assent would be refused to any law purporting to override the law enacted by Parliament.

Our Recommendations

11.30. We are of the view that Parliament is competent to pass a law for compulsory acquisition of land even in cases where the acquisition is sought to be made for State purposes such as town planning/improvement, development of industries, public health and sanitation, slum clearance etc. which are matters covered by the State List. The mere fact that the objects of acquisition are covered by the matters enumerated in the State List would not detract from the fact that the legislation is, in pith and substance, relating to acquisition of property under Entry 42 of the Concurrent List. While we agree that the States may have their own laws relating to town planning, public health, etc. for regulating matters other than land acquisition, we do not see any reason why acquisition for such

purposes should not be governed in regard to essential matters such as compensation and time limits by Parliamentary Legislation on the subject. Parliamentary legislation in so far as it relates to the principles of compensation and the time-limits for the completion of acquisition proceedings, in accordance with our recommendations, will override the repugnant provisions in the existing law on the subject because under Article 254(2) of the Constitution, Parliament can always override or repeal State Law to the Contrary in the concurrent field. A law which might thereafter be passed by a State in derogation of the law passed by Parliament, will have to be reserved for the assent of the President and would not become law unless the same is given in accordance with Article 31(3). When the matter comes for the assent of the President, it would be open to the concerned Administrative Ministry of the Union to advise the President to refuse his assent to any law of the State purporting to override the law enacted by Parliament particularly when the State law adopts principles of compensation etc. which are materially different from those contained in the Law enacted by Parliament. The assent of the President will thus depend on the policy of the Union Executive. In our view, the policy should be governed by the necessity of ensuring uniformity of law of compulsory acquisition of land throughout the country, irrespective of the objects to be served by the acquisition.



ANNEXURE I
(Ref. Para 11.20)

A summary of Principles of Compensation in other Central Acts which prescribe different Principles

1. The Requisitioning and Acquisition of Immovable Property Act, 1952 (XXX of 1952)

Section 8(3) of the Act had provided for the payment of compensation for the acquisition of requisitioned land on the basis of

- (a) the price which the property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or
- (b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, whichever is less.

Section 37(1) of the Defence of India Act, 1962 contains identical provisions in regard to compensation for acquisition of property requisitioned under that Act.

In *Union of India v. Kamalabai H. Parekh*¹, the provisions of Section 8(3) of the Requisitioning and Acquisition of Immovable Property Act, 1952, were challenged under article 31(2) of the Constitution. The Supreme Court struck down cl. (b) of S. 8(3) as violative of article 31(2). It was observed by the court that the method for determining compensation prescribed in cl. (b) was arbitrary inasmuch as it has no relation to the value of the land at the date of the notice of acquisition which may be many years after the date of requisition and that no grounds were shown and no circumstances were brought to the notice which necessitated the fixing of the date of requisition as the one for ascertaining the real value of the property. The just equivalent was frozen by the clause at the minimum of twice its value on the date of requisition though it is common knowledge that all over India there has been a spiralling of land prices after the conclusion of the last world war.² Therefore, the Court held that clause (a) of S. 8(3) lays down a principle aimed at giving the owner of the land something which approximates its just equivalent on the date of acquisition, whereas the basis provided by clause (b) has nothing to do with the just equivalent of the land on the date of acquisition, nor is there any principle for such a basis, as such it does not satisfy the requirements of article 31(2) of the Constitution.³

It may be pointed out here that this case was decided following the principle of *Mrs. Bela Ranerjee's* case, in respect of an Act enacted before the Constitution (Fourth Amendment) Act, 1955. The Supreme Court has now held in *State of Gujarat v. Shantilal Mangaldas*⁴ that after the Constitution (Fourth Amendment) Act, 1955, the courts cannot enter upon an enquiry whether the compensation provided by the legislature is a just equivalent of the value of the property expropriated.

In their Report of 1958, the Law Commission had suggested the application of an uniform principle of compensation on the basis of market-value, on the date of the notice to acquire the requisitioned land. Sub-section 3 of Section 8 of the Requisitioning and Acquisition of Immovable Properties Act dealing with compensation payable in case of acquisition following

requisition has been omitted by the Law Commission as under their proposed scheme it will come within the scope of Part II of their draft Bill relating to acquisition of land.⁵

2. The Slum Areas (Improvement and Clearance) Act, 1956 (XCVI of 1956)

This Act extends to all the Union Territories except the islands of Andamans and Nicobar and those of Laccadive, Minicoy and Amindive. The object of the Act is to make provisions for the improvement and clearance of slum areas in urban territories. It provides for acquisition of land for the purposes of the Act and lays down in S. 15(1) and (6) the principles for determining the amount of compensation for the land acquired. The compensation to be paid is an amount equal to sixty times the net average monthly income actually derived from such land including any building thereon during the period of five consecutive years immediately preceding the date of publication of the notice of acquisition. The net average monthly income has to be calculated in a manner and in accordance with the principles laid down in the schedule to the Act (See Schedule). In case where there is any building on the land in respect of which the net average monthly income has been determined, no separate compensation is to be paid in respect of such building except when the owner of the land and the owner of the building are different persons and compensation is to be apportioned between them in the same proportion as the market price of the land bears to the market price of the building on the date of the acquisition.

THE SCHEDULE

Principles for determination of the net average monthly income

1. The competent authority shall first determine the gross rent actually derived by the owner of the land acquired including any building on such land during the period of five consecutive years referred to in sub-section (1) of section 15.
2. For such determination the competent authority may hold any local inquiry and obtain, if necessary, certified copies of extracts from the property tax assessment books of the municipal or other local authority concerned showing the rental value of such land.
3. The net average monthly income referred to in sub-section (1) of section 15 shall be sixty per cent of the average monthly gross rent which shall be one sixtieth of the gross rent during the five consecutive years as determined by the competent authority under Para 1.
4. Forty per cent of the gross monthly rental referred to above shall not be taken into consideration in determining the net average monthly income but shall be deducted in lieu of the expenditure which the owner of the land would normally incur for payment of any property tax to the municipal or other local authority, for collection charges, income tax or bad debts as well as for works of repairs and maintenance of the buildings, if any, on the land.

¹. ATR 1968 SC4377.

². *Ibid* p. 383.

³. *Ibid* pp. 383-384.

⁴. C.A. No. 1377 of 1968 decided on 13-1-1969.

⁵. See Section 50, clause (a) of the draft Bill of the Law Commission, page 79, and Section "49(2)(b)" and 50(a) in the draft Bill of the Law Commission, 10th Report, See page 79 and the observations on p. 47.

5. Where the land or any portion thereof has been unoccupied or the owner has not been in receipt of any rent for the occupation of the land during the whole or any part of the said period of five years, the gross rent shall be taken to be the income which the owner would in fact have derived if the land had been leased out for rent during a period prior or subsequent to the period during which it remained vacant or from similar land in the vicinity shall be taken into account.

3. The Coal Bearing Areas (Acquisition and Development Act, 1957 (XX of 1957))

The object of this Act *inter-alia* is to provide to the acquisition of unworked land containing or likely to contain coal deposits or of rights in or over such land. Section 13(5) adopts principles of compensation as laid down in S. 23(1) of the Land Acquisition Act of 1894 for the land acquired for the purposes of the Act with the following modifications:—

1. In the *Explanation* to clause firstly, it is provided that the value of any minerals lying in the land shall not be taken into consideration in determining the market value of any land.
2. The application of clause *fourthly* is restricted to immovable property and earnings only.
3. Under clause *sixthly* the diminution of the profits is to be calculated as those resulting between the date of the publication of S. 4(1) notification and

the date of the publication of declaration and not as between the date of S. 4(1) notification and the date of taking possession.

4. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (LX of 1948)

The Act applied to the erstwhile Part C States of Delhi and Ajmer. This Act provided for the acquisition of land for the resettlement of displaced persons and for the payment of compensation therefor taking into consideration the market value of the land on the date of publication of the notice of acquisition, or on the 1st day of September, 1939 with an addition of 40 per cent thereof, whichever is less. However, in cases where such land was purchased by the owner between 1st September, 1939 and 1st April, 1948, or where there was a decree of pre-emption between these dates, it provided for taking into consideration the price actually paid or the amount paid for acquiring the land in the decree of pre-emption, as the case may be.

The provision in regard to payment of market value as on 1st September, 1939 with an addition of 40% thereof has been struck down by the Punjab High Court at Delhi in *Barkat Ram & Ors. v. Union of India*⁴ on the ground that they clearly violated the constitutional guarantee contained in S. 299(2) of the Government of India Act, 1935 as they did not provide for paying just equivalent of what the owner had been deprived of.

⁴. AIR 1966 Punj. 507.



ANNEXURE II

(Ref. Para No. 11*23)

A list of enactments permitting Government to acquire land for specific purposes such as town planning/improvements etc. which adopt the principles of Sections 23 and 24 of the Central Land Acquisition Act.

1. The Assam Municipal Act, 1923 (I of 1923) S. 58. (Before its repeal by Assam Act 15 of 1950).
2. The Bengal Municipal Act, 1932 (XV of 1932), S. 98.
3. The Bihar and Orissa Municipal Act, 1922 (VII of 1922), S. 68.
4. The Bombay Provincial Municipal Corporations Act, 1949 (LIX of 1949), S. 78.
5. The Cawnpore Urban Area Development Act, 1945 (VI of 1945), S. 71.
6. The City of Bangalore Improvement Act, 1945 (V of 1945), S. 27.
7. The City of Mysore Improvement Act, 1903 (III of 1903), S. 23.
8. The City of Nagpur Corporation Act, 1948. S. 68.
9. The Darbhanga Improvement Act, 1934 (IV of 1934), S. 41.
10. The Delhi Development Act, 1957 (LXI of 1957), S. 15 as amended by S. 9 of the Delhi Development (Amendment) Act, 1963 (LVI of 1963).
11. The Delhi Municipal Corporation Act, 1957 (LXVI of 1957), S. 199.
12. The Gujarat Municipalities Act, 1963 (XXXIV of 1964), S. 69.
13. The Hyderabad Municipal Corporation Act, 1955 (II of 1956), S. 147.
14. The Kerala Land Development Act, 1964 (XVII of 1964), S. 26.
15. The Kerala Municipalities Act, 1960 (XIV of 1961), S. 84.
16. The Madhya Pradesh Resettlement of Displaced Landholders (Land Acquisition) Act, 1954 (XXII of 1954), S. 10.
17. The Madhya Pradesh Municipalities Act, 1961 (XXXVII of 1961), Ss. 102 & 303(6).
18. The Madras City Municipal Act, 1919 (IV of 1919), S. 76.
19. The Madras District Boards Act 1920 (XIV of 1920), S. 66.
20. The Madras District Municipalities Act, 1920 (V of 1920), S. 67.
21. The Madras State Housing Board Act, 1961 (XVII of 1961), S. 70.
22. The Maharashtra Municipalities Act, 1965 (XL of 1965), S. 330(4).
23. The Mysore Housing Board Act, 1962 (X of 1962), S. 23(2).
24. The Mysore Industrial Areas Development Act, 1966 (XVIII of 1966), S. 30.
25. The Mysore Municipalities Act, 1964 (XXII of 1964) S. 159(4).
26. The Orissa Municipal Act, 1950 (XXIII of 1950), S. 304.



ANNEXURE III

(Ref. para No. 11-23)

A list of enactments which adopt the principles of Sections 23 and 24 of the Central Land Acquisition Act subject to modifications and additions when acquisition is sought to be made for specific purposes such as town planning/improvement etc.

1. The Andhra Pradesh Housing Board Act, 1956 (XLVI of 1956), Ss. 40-40B.
2. The Andhra Pradesh Housing Schemes (Acquisition of Land) Act, 1961 (XXXIX of 1961 S. 6 Sched. has specified the amount of compensation to be paid to each person named in the Schedule.
3. The Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 (XXXII of 1956), S. 6, Sched.
4. The Assam Slum Areas (Improvement and Clearance) Act, 1959 (XII of 1961), S. 22.
5. The Assam Town and Country Planning Act, 1959 (II of 1959), S. 33.
6. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950 (XXXVIII of 1950), S. 7.
7. The Bihar Restriction of Uses of Land Act, 1948 (XXIII of 1948), S. 10(3), Sched.
8. The Bihar Town Planning and Improvement Trust Act, 1951 (XXXV of 1951), S. 71, Sched.
9. The Bombay Highways Act, 1955 (LV of 1955), S. 28(2), Sched.
10. The Bombay Town Planning Act, 1954 (XXVII of 1955), Ss. 11 and 84, Sched. now repealed in Maharashtra by the Maharashtra Regional and Town Planning Act, 1966 (XXXVII of 1966).
11. The Calcutta Improvement Act, 1911 (V of 1911), S. 71, Sched.
12. The Calcutta Municipal Act, 1951 (XXXIII of 1951), S. 524.
13. The City of Jubbulpore Corporation Act, 1948 (III of 1950), S. 293, Sched.
14. The Delhi Development Act, 1957 (LXI of 1957), S. 16 (before the Amending Act of 1963).
15. The Jammu & Kashmir Town Planning Act, 1997 (1940 A. D.) (XI of 1997), S. 31.
16. The Kerala Land Acquisition Act, 1961 (XXI of 1962) S. 48, as amended by Act IV of 1966 and Act XXIX of 1968 (for acquisition project areas).
17. The Land Acquisition (Bombay Amendment) Act, 1948, (IV of 1948) for Housing Schemes, S. 3.
18. The Land Acquisition (Madras Amendment) Act, 1961, (XXIII of 1961) 1-1 for Housing Schemes, S. 3.
19. The Land Acquisition (M. P. Amendment) Act, 1959 (V of 1959), S. 3, in its application to Bhopal area.
20. The Madhya Pradesh Slum Improvement (Acquisition of Land) Act, 1956 (XXXII of 1956).
21. The Madhya Pradesh Town Improvement Trust Act, 1960 (XIV of 1961), S. 77.
22. The Madras Lignite (Acquisition of Land) Act, 1953 (XI of 1953), S. 2.
23. The Madras Slum Improvement (Acquisition of Land) Act, 1954. (XI of 1954), S. 6
24. The Madras Town Planning Act, 1920 (VII of 1920), S. 35.
25. The Maharashtra Industrial Development Act 1961 (III of 1962), S. 33(5).
26. The Maharashtra Regional & Town Planning Act, 1966 (XXXVII of 1966), S. 126(3).
27. The Mysore Highways Act, 1964 (XLIV of 1964) Ss. 28(2) & 30, Sched.
28. The Mysore Slum (Improvement and Clearance) Act, 1958 (VIII of 1959), S. 15, Sched.
29. The Mysore Town & Country Planning Act, 1961, (XI of 1963), S. 72.
30. The Nagarjunasagar Project (Acquisition of Land) Act, 1956 (XXXII of 1956), S. 3.
31. The Nagpur Improvement Trust Act, 1936 (XXXVI of 1936), S. 61.
32. The Punjab Slum Areas (Improvement and Clearance) Act, 1961 (XXIV of 1961), S. 15, Sched.
33. The Punjab Town Improvement Act, 1922 (IV of 1922), S. 59 Sched.
34. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (LX of 1948), S. 7.
35. The Rajasthan Housing Schemes (Land Acquisition) Act, 1960 (XL of 1960), S. 3.
36. The Rajasthan Municipalities Act, 1959 (XXXVIII of 1959), S. 82.
37. The Rajasthan Urban Improvement Act, 1959 (XXXV of 1959), S. 53.
38. The Slum Areas (Improvement and Clearance) Act, 1956 (XCVI of 1956), S. 15.
39. The Trivandrum City Improvement Trust Act, 1961 (1 of 1961), S. 73, Sched.
40. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (XXVI of 1948), S. 11.
41. The Uttar Pradesh Nagar Mahapalika Administration, 1959 (II of 1957), S. 376, Sched.
42. The United Provinces Road Side Land Control Act, 1945 (X of 1945), S. 9, Sched.
43. The Uttar Pradesh Areas (Improvement and Clearance) Act, 1962 (XVIII of 1962), S. 20.
44. The United Provinces Town Improvement Act, 1919 (VII of 1919), S. 10, Sched.
45. The West Bengal Land Development and Planning Act, 1948 (XXI of 1948), S. 8.
46. The Delhi Restriction of Uses of Land Act, 1941 (XII of 1941), S. 10.
47. The Gujarat Industrial Development Act, 1962 (XXIII of 1962), S. 28(1).
48. The Howrah Improvement Act, 1956 (XIV of 1956), S. 70.
49. The Orissa Town Planning and Improvement Trust Act, 1956 (X of 1957), S. 63.
50. The Punjab Municipalities Act, 1911 (III of 1911), S. 58.

ANNEXURE IV

(Ref. para 11'23)

A Comparative Analysis of the Modified and additional principles of compensation for acquisition of land for specific purposes such as town planning/improvement etc.

PART I

Matters to be taken into consideration in Determining Compensation

<i>Principle</i>	<i>Acts in which provided</i>
(i) MARKET VALUE	
1. Market value as on the date of publication of notification of the intention to acquire land	
The market value of the land at the date of the publication of the notification of the (a) proposal to declare an area as controlled one.	(a) Bihar Restriction of Uses of Land Act, 1948, Sched. U.P. Roadside Land Control Act, 1945, S. 9. Sched.
(b) intention to acquire land for the purpose of the scheme sanctioned by the State Government.	(b) M. P. Town Improvement Trusts Act, 1960, S. 77.
2. Market value as on the date of publication of notification under S. 4. or on a specified anterior date, whichever is less.	
The market value of the land on the date of the publication of notification under S.4, or	
(a) on the 31st December, 1946, whichever is less	(a) West Bengal Land Development and Planning Act, 1948, S.8.
(b) an amount equal to the market value of the land during the five years immediately preceding such date, whichever is less.	(b) Land Acquisition (Madras Amendment) Act, 1961, S.3 (for Housing Schemes).
(c) on the 1st January, 1948, whichever is less	(c) Land Acquisition (Bombay Amendment) Act, 1948 S.3 (for Housing Schemes).
(d) on the 1st July, 1953, and the value of any improvements to the land effected after that date and before the date of publication of notification under S.4 whichever is less.	(d) Nagarjunasagar Project (Acquisition of Land) Act 1956, S. 3.
3. Market value as on the date of publication of notification under S.4, or on a specified anterior date plus certain percentage of such market value in lieu of increases in land value.	
The market value of the land on the date of publication of notification under S. 4, or	
(a) on the date of publication of the notification declaring a 'project area', the value of any improvement to the land effected after that date and before the date of publication of notification under S. 4 and, where there has been a normal rise in land value in the locality in which the project arealies after the date of the publication of 'project' notification and before the date of publication of notification under S.4, such rise in price subject to a maximum of 20% of the market value of the land at the date of the publication of 'Project' notification, whichever is less.	(a) Kerala Land Acquisition Act, 1961, S.48 (for acquisition in project areas only).
(b) on the 1st October, 1955 whichever is less, and further sum not exceeding 25% of such market value as the court may deem fit in consideration of the appreciation in the price of the land concerned by reasons of the location of the capital at Bhopal, regard being had to the situation of such land.	(b) Land Acquisition (M.P. Amendment) Act, 1959 S.3 (for Bhopal Area only).
4. Market value as on a specified date	
The market value of the land as on the 28th April, 1947 and the value of any agricultural improvements on the land commenced, made or effected after that date and before the publication of notification under S.4.	Madras Lignite (Acquisition of land) Act, 1953, S.2.
5. Market value as on a specified anterior date plus reasonable cost of development made plus certain percentage of increase in value on the date of acquisition.	
The market value as prevailing on the 1st of January, 1957 and reasonable cost of development, if any, made during the period and 25% increase in value on the date of acquisition of the land.	Assam Town and Country Planning Act, 1959, S. 33.

Principle

Acts in which provided

6. Market value as on the date of publication of notice/notification of framing/making of improvement scheme or draft development plan as designating the area as a new town site, as the case may be.

- (a) The market value of the land shall, where land is to be acquired for purposes of a new town be the market value prevailing on the date of notification designating the area as a site for new town, and in any other case, at the date of publication of the draft development plan, or, the draft town planning scheme, as the case may be. (a) Maharashtra Regional and Town Planning Act, 1966, S. 126 (3).

If the land reserved allotted or designated for any purpose specified in any plan is not acquired by agreement or proceedings for its acquisition are not commenced within the ten years from the date on which a final Regional/Development Plan comes into force the owner or person interested may serve a notice and if the land is not acquired or no steps commenced for its acquisition within six months from the date of the service of such notice the reservation, allotment or designation shall be deemed to have lapsed (and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan). Ibid, S. 127.* (See also the provisions of Mysore Act below).

- (b) The market value on the date of the publication of the outline Development Plan or the Comprehensive Development Plan or on the date on which a town planning scheme comes into force, as the case may be. Mysore Town and Country Planning Act, 1961, S.72.

If the proceedings for acquisition are commenced after a period of two years from the aforesaid date, the market value shall be the value on a date two years immediately preceding the date on which a notification for acquisition of the land is issued.

If the land designated in the outline/Development plan is not acquired by agreement or proceedings for its acquisition are not commenced within five years from the date of publication of the Plan the owner or person interested may serve a notice and if the land is not acquired or no steps commenced for its acquisition within six months from the date of the service of such notice the designation shall be deemed to have lapsed. Ibid, s.69(2). (See also the provisions of Maharashtra Act above).

- (c) If the land is not acquired within three years from the date of notification (notifying the Government's sanction to the scheme), the notification shall cease to have effect as a declaration under S. 6 of the Land Acquisition Act, 1894. Madras Town Planning Act, 1920, s.34.

- (d) The market value of the land on the date of the first publication of the notice that the improvement scheme has been framed; or on the date of the issue of the notice to the owner of the intention to acquire property in the case of deferred street scheme; or (d) Bihar Town Planning and Improvement Trust Act, 1951, S. 71, Sched. Punjab Town Improvement Act, 1922, S.59 Sched; U.P. Town Improvement Act, 1919, Sched; Nagpur Improvement Trust Act, 1936 S.61; U.P. Nagar Mahapalika Adhiniyam, 1959, S. 176, Sched. ii. Trivandrum City Improvement Act, 1961, S. 73 Sched.

—On the date of the refusal if the land is being acquired consequent on the refusal of permission to erect, re-erected, add to or alter any building or wall on the land; or

—Nagpur Improvement Trust Act, 1936, S.61 & Schedule.

—On the date of publication of S.4 notification in other cases.

—U.P. Nagar Mahapalika Adhiniyam, 1959, S. 176, Sched. II.

- (e) The market value of the land on the date of publication of the notice that the improvement scheme has been framed; or on the date of publication of S.4 notification in other cases.

(e) Calcutta Improvement Act, 1911, S.71 Sched.

- (f) The market value of the land on the date of the first publication of notification that the improvement scheme has been made.

(f) City of Jabalpur Corporation Act, 1948, Sched

- (g) The market value of the land on the date of publication of the notification of the resolution of the Municipal Council of making the scheme or of the notification of the State Government requiring the Council to prepare and submit a draft scheme.

(g) Madras Town Planning Act 1920 S. 35(2); J&K Town Planning Act, 1940, S.31.

*A similar provision, except the words in the bracket exists in S.11(3) of the Bombay Town Planning Act, 1954 (Which is now applicable in the state of Gujarat after its repeal in Maharashtra) but is not made applicable to the proposals in a development plan designating the use of the land for the purposes such as residential, industrial, commercial, and agriculture.

<i>Principle</i>	<i>Acts in which provided</i>
7. Market value as on the date of publication of declaration under section. 6	
The market value on the date of the publication of declaration under S. 6.	Rajasthan Municipalities Act, 1959, S. 82; Bombay Town Planning Act, 1954, Ss. 11 and 84 and Sched. (now repealed in Maharashtra); Bombay Highways Act, 1955, Ss. 28(2), Sched., Mysore Highways Act, (now deleted in Maharashtra by Act XXIV of 1967); 1964, Ss. 28(2) and 30; Sched; Calcutta Municipal Act, 1951, S. 524.
8. Market value as on the date of publication of declaration under S.6. or on a specified anterior date, whichever is less.	
The market value of the land on the date of the publication of the declaration under S.6. or on the 31st December, 1953, whichever is less.	Rajasthan Housing Schemes (land Acquisition) Act, 1960, S.3.
9. Market value as on the date of issue of show cause notice	
The market value of the land on the date on which the notice calling upon the owner to show cause why the land should not be acquired is issued.	Rajasthan Urban Improvement Act, 1959, S. 53.
10. Market value as on the date of issue of show cause notice, or on a specified anterior date plus certain percentage of increases in land values and cost of development etc. whichever is less	
See item 2 under 'Exclusion of potential value' below	• Delhi Development Act, 1957, S. 16. (before 1963 amendment); Maharashtra Industrial Development Act, 1961, S.33(5). (Now deleted by Act XI of 1967, S.3).
11. Market value as on the date of publication of show cause notice	
The market value of the land on the date of publication of notice calling upon the persons interested in the land to show cause why the land should not be acquired.	Maharashtra Industrial Development Act, 1961, S 33(5) as amended by Mah. Act XI of 1967.
12. Capitalisation of net average income derived from the land	
(a) An amount equal to 100 times the net average monthly income* in U. P. Act, 12 times the net average annual income in 5 times the net average annual income in Madras Act, 60 times the net average monthly income* in the Central, Punjab and Assam Acts, actually derived from such land or building (or where such land or building remained unoccupied or no rent in respect of it has accrued, the rent actually derived from a similar land or building in the vicinity) during the period of five consecutive years immediately preceding the date of publication of the declaration of acquisition.	The Central Slum Areas (Improvement and Clearance) Act, 1956** S.15 and Sched; Andhra Slum Improvement (Acquisition of Land) Act, 1956, S. 6, Sched; U. P. Slum Areas (Improvement & Clearance) Act, 1962, S. 20 Sched; Punjab Slum Areas (Improvement and Clearance) Act, 1961, S. 15 Sched., Madras Slum Improvement (Acquisition of Land) Act, 1954, S. 6, sched., Assam Slum Areas (Improvement and Clearance) Act, 1959, S. 22.
(b) An amount equal to 20 times the net average annual income actually derived from the land during the period of five consecutive years immediately preceding the date of the notification declaring intention to make a housing scheme for any area (The net average income shall be 1/5th of the gross rent actually derived from the land and buildings if any, during these five years after deducting municipal taxes, revenue charges and cost of repairs for the said period of five years from such gross rent.)	Andhra Pradesh Housing Board Act, 1956, S. 40B.

(ii) EXCLUSION OF POTENTIAL VALUE

1. Market value according to the use to which the land was put:—

- (a) on the date of publication of notification under S.4 or publication of notice of framing of improvement scheme as the case may be.

1. (a) Bihar Restriction of Uses of land Act, 1948, S.2 Sched., City of Jabalpur Corporation Act, 1948, S. 293; Nagpur Improvement Act, 1936, S. 61 Sched; U. P. Roadside Land Control Act, 1945, S. 9, Sched. II; U.P. Nagar Mahapalika Adhiniyam, 1959, S. 176 Sched. II; U.P. Town Improvement Act, 1919, S. 10, Sched; Punjab Town Improvement Act, 1922, S. 59, Sched.

*Net average monthly income is calculated under the Acts at 69% of the average monthly gross rent.

**This Act is in force in certain Union Territories including Delhi.

Principle	Act in which Provided
(b) on the date of notification under S. 6	(b) Calcutta Municipal Act, 1951, S. 524; Mysore Highways Act, 1964, S. 28 (2) and C. Sched.; Rajasthan Municipalities Act, 1959, S. 82; Bombay Highways Act, 1955, S. 28(2) Sched. (now deleted in Maharashtra by Act 24 of 1967); Mysore Town and Country Planning Act, 1961, S. 72 Bombay Town Planning Act, 1954 (now repealed in Maharashtra).
(c) at the date of notice calling upon the owner to show cause why the land should not be acquired.	(c) Rajasthan Urban Improvement Act, 1959, S. 53.
(d) during the five years preceding the date with reference to which the market value is determined.	(d) Bihar Town Planning and Improvement Trust Act, 1951, S. 71. Sched.
2. The value of the land shall be taken to be —	
(i) the market value of the land on the date on which the notice calling upon the owner to show cause why the land should not be acquired is issued, <i>such market value being determined on the basis of the use of the land on that date, or</i>	(2) Delhi Development Act, 1957, S. 16 (before 1963 amendment); Maharashtra Industrial Development Act, 1961, S. 33(5) as it stood before its amendment by S. 3 of the Maharashtra Act XI of 1967.
(ii) an amount equal to sum total of the three following amounts, that is to say, an amount equal to the market value of the land on the date of notification of the area in which it is situated (i.e., notifying the date from which these provisions shall take effect in such area) in the Maharashtra Act, and on the 1st October, 1955 in the Delhi Act, such market value being determined on the basis of the use of the land on that date, an amount equal to twenty-five per cent, of the increase, if any, (not including, however, any increase consequent on any development carried out on the land) in the market value of the land during the period between the date of such notification in the Maharashtra Act, (i.e. notifying the date from which these provisions shall take effect in such area) and on the 1st October, 1955 in the Delhi Act, and the date of notice, and an amount which in the opinion of the Collector represents the reasonable cost of development, if any (including in the case of agricultural land, the cost of any improvement carried out thereon in the course of agricultural operations) carried out on the land during that period, whichever is less.	
(iii) EXPENDITURE INCURRED TO SECURE MORE PROFITABLE USE OF THE LAND	
If it be shown that before the date with reference to which the market value is to be determined the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss/expenditure may be paid to him.	Rajasthan Municipalities Act, 1959, S. 82; Bihar Restriction of Uses of Land Act, 1948, S. 2, Sched; City of Jabalpur Corporation Act, 1948, S. 193, Sched. I; Nagpur Improvement Act, 1936, S. 61, Sched; U.P. Roadside Land Control Act, 1945, S. 9, Sched; U.P. Nagar Mahapalika Adhiniyam, 1959, S. 176, Sched. II; U.P. Town Improvement Act, 1919, Sched.; M.P. Town Improvement Trusts Act, 1960, S. 77; Punjab Town Improvement Act, 1922, S. 59, Sched.
(See also principles of exclusion No. 4, 9, 10, 11 in Part II of this Annexure).	
(iv) DAMAGE RESULTING FROM DIMINUTION OF PROFITS OF THE LAND BETWEEN SPECIFIED DATES	
1. The damage (if any) bonafide resulting from diminution of the profits of the land between the time of publication of the declaration of sanction of scheme, and the time of the Collector's taking possession of the land.	1. City of Jabalpur Corporation Act, 1948, Sched.
2. The damage (if any) bonafide resulting from diminution of the profits of the land between the time of the issue/publication of the notice of intention to acquire property (in the case of deferred street scheme) or the date of first publication of the notice of framing of other town improvement schemes, as the case may be, and the time of the Collector's taking possession of the land.	2. U. P. Nagar Mahapalika Adhiniyam, 1959, S. 176 Sched. II; Bihar Town Planning and Improvement Trust Act, 1951, S. 71 Sched; Punjab Town Improvement Act, 1922, S. 59 Sched; U.P. Town Improvement Act, 1919, Sched.; Nagpur Improvement Trust Act, 1936, S. 61, Sched.; M.P. Town Improvement Trust Act, 1960, S. 77; Trivandrum City Improvement Trust Act, 1961, S. 73 Sched.

Principle	Act in which Provided
3. The damage (if any) bonafide resulting from diminution of the profits of the land between the time of the publication of the notification of the proposed declaration of the controlled area, and the time of the Collector's taking possession of the land.	3. U.P. Roadside Land Control Act, 1945, S. 9 Sched.
(v) DAMAGE SUSTAINED AT THE TIME OF COLLECTOR'S TAKING POSSESSION AND EXPENSES INCIDENTAL TO CHANGE OF RESIDENTS ETC. (i.e. UNDER CLAUSES FOURTHLY & FIFTHLY OF S. 23(1) OF THE CENTRAL ACT.)	
These clauses shall not apply in the case of offensive industries, which must, under the provisions of the scheme, be removed.	Madras Town Planning Act, 1920, S. 35(2); J & K Town Planning Act, 1940, S. 31.
(vi) PAYMENT OF ADDITIONAL SUM IN CONSIDERATION OF THE COMPULSORY NATURE OF THE ACQUISITION	
1. The payment of an additional sum in consideration of the compulsory nature of the acquisition is provided at the following rates :—	
(a) 5 per cent of the market value of the land	1. (a) Land Acquisition (Madras Amendment) Act, 1961, S. 3 (for Housing Schemes).
(b) 10 per cent of the market value of the land	(b) Rajasthan Municipalities Act, 1959, S. 82.
2. The payment of an additional sum is provided in the following cases only;	
(a) buildings in the actual occupation of the owner or his tenant or occupied free of rent by a relative of the owner and land appurtenant thereto and	2. (a) & (b) Nagpur Improvement Trust Act, 1936, S. 61. Sched.; City of Jabalpur Corporation Act, 1948, S. 239, Sched.; U.P. Nagar Mahapalika Adhiniyam, 1959, S. 376, Sched. II; U.P. Town Improvement Act, 1919, S. 58, Sched.; Rajasthan Municipalities Act, 1959, S. 82 (with the words underlined in (a) and except the words underlined in (b)).
(b) gardens not let to tenants but used by the owners as a place of resort.	
(c) Land acquired for deferred street scheme.	U.P. Town Improvement Act, 1919, S. 58 Sched.; U.P. Nagar Mahapalika Adhiniyam 1959, S. 376; Sched. II.
3. The Payment of such an additional sum is excluded in the following cases only	
Where the land acquired is situated in an area which is declared by the State Government to be a congested or slum area and the land is not in the actual possession of the owner.	Bihar Town Planning and Improvement Trust Act, 1961, S. 71, Sched.
4. The clause which provides for the payment of such an additional sum is either omitted or it is specifically provided that no allowance shall be made on account of the acquisition being compulsory.	4. Punjab Town Improvement Act, 1922, S. 59, Sched.; Calcutta Improvement Act, 1911, S. 71 Sched.; Land Acquisition (Bombay Amendment) Act, 1943, S. 3 (for housing Schemes); Rajasthan Housing Schemes (Land Acquisition) Act, 1960, S. 3; Bombay Town Planning Act, 1954, Ss. 11 and 84, Sched. (now repealed in Maharashtra); Delhi Development Act, 1957, S. 16 (before 1963 Amendment); J. & K. Town Planning Act, 1940, S. 31; Rajasthan Urban Improvement Act, 1959, S. 53(6).
(vii) DAMAGE SUFFERED DUE TO DELAY IN MAKING AWARD	
(a) Where the Collector has not made an award under S. 11 in respect of any land within a period of two years *from the date of publication of declaration under S. 6 etc. the owner of the land shall unless he has been responsible for the delay to a material extent be entitled to receive compensation for the damage suffered by him in consequence of the delay.	(a) Calcutta Improvement Act, 1911, S. 71, Sched.; (except the words underlined) ; Calcutta Municipal Act, 1951, S. 524 (except the words underlined) Nagpur Improvement Trust Act, 1936, S. 61, Sched.; Bihar Town Planning and Improvement Trust Act, 1951, S. 71, Sched.; U.P. Town Improvement Act, 1919, S. 56, Sched.; City of Jabalpur Corporation Act, 1948, S. 293, Sched.; Punjab Town Improvement Act, 1922, S. 59, Sched. Trivandrum City Improvement Trust Act, 1961, S. 73, Sched.
(b) No such compensation shall be payable when proceedings for the acquisition of land have been abandoned on the execution of an agreement, or the acceptance of payment.	(b) Calcutta Improvement Act, 1911, S. 71, Sched.

*The period of one year is prescribed under the Punjab Town Improvement Act, 1922.

PART II

Matters to be neglected in determining compensation

Principle	Acts in which adopted
1. Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by Court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to public health, the amount of that increase shall not be taken into account.	1. Madras Town Planning Act, 1920, S. 35; Maharashtra Industrial Development Act, 1961, S. 33 (now deleted by Act XI of 1967, S. 3); Bombay Highways Act, 1955, Ss. 28(2) Sched (now deleted in Maharashtra by Act 24 of 1967); Rajasthan Urban Improvement Act, 1959, S. 53; Mysore Highways Act, 1964 Schedule; Bombay Town Planning Act, 1954, S. 11 (now repealed in Maharashtra); Delhi Development Act, 1957, S. 16 (before 1963 amendment); M.P. Town Improvement Trusts Act, 1960, S. 77; J&K Town Planning Act, 1940, S. 31; Mysore Town and Country Planning Act, 1961, S. 72.
2. If the market value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market value shall be deemed to be market value of the land if put to ordinary uses.	2. Rajasthan Municipalities Act, 1959, S. 82; Bihar Restriction of Uses of Land Act, 1948, S. 2; Bihar Town Planning and Improvement Trust Act, 1951, S. 71; City of Jabalpur Corporation Act, 1948, S. 293; Nagpur Improvement Trust Act, 1936, S. 61; U.P. Roadside Land Control Act, 1945, S. 9; U.P. Nagar Mahapalika Adhiniyam, 1959, S. 176; U.P. Town Improvement Act, 1919, Schedule; Calcutta Municipal Act, 1951, S. 524; Calcutta Improvement Act 1911, S. 71; Punjab Town Improvement Act, 1922, S. 59, Sched.
3. If the market value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates such overcrowding shall be disregarded and the market value shall be deemed to be the market value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding.	3. Rajasthan Municipalities Act, 1959, S. 82; Bihar Town Planning and Improvement Trusts Act, 1951, S. 71 Sched. (not applicable if the building acquired is in actual possession of the owner); City of Jabalpur Corporation Act, 1948, S. 293, Sched. I; Nagpur Improvement Trust Act, 1936, S. 61, Sched.; U.P. Nagar Mahapalika Adhiniyam, 1959, S. 176, Sched. II; U.P. Town Improvement Act, 1919, Sched.; Calcutta Improvement Act, 1911, S. 71, Sched.
4. If the market value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the date with reference to which the market value is to be determined, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceeding for the acquisition of the land being taken under this Act.	4. Rajasthan Municipalities Act, 1959, S. 82; Bihar Restriction of Uses of Land Act, 1948, S. 2, Sched.; City of Jabalpur Corporation Act, 1948, S. 293 Sched. I; Nagpur Improvement Trust Act, 1936, S. 61, Sched.; U.P. Roadside Land Control Act, 1945 S. 9, Sched.; U.P. Nagar Mahapalika Adhiniyam 1959, S. 176, Sched. II; U.P. Town Improvement Act, 1919, Sched.; Calcutta Municipal Act, 1951, S. 524 (the period of two year is reduced to one year in this Act); Calcutta Improvement Act, 1911, S. 71, Sched.; Punjab Town Improvement Act, 1922, S. 59, Sched.
5. If the market value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded.	5. Rajasthan Municipalities Act, 1959, S. 82; Bihar Town Planning and Improvement Trust Act, 1951, S. 7 Sched.; Calcutta Improvement Act, 1911, S. 71, Sched.; Trivandrum City Improvement Trust Act, 1961, S. 73 Sched.
6. The special suitability or adaptability if any of the land for any purpose shall not be taken into account if that purpose is one to which it could be applied only in pursuance of statutory powers or for which there is not a market apart from the special needs of a particular purchaser or the requirements of the Govt./ Department or any Local or Statutory public authority.	6. Madras Town Planning Act, 1920, S. 35(3); Maharashtra Industrial Development Act, 1961 S. 33(5) (now deleted by Act XI of 1967, S. 3); Bombay Highways Act, 1955, Ss. 28 (2) Sched. (now deleted in Maharashtra by Act 24 of 1967); Rajasthan Urban Improvement Act, 1959, S. 53(6); Mysore Highways Act, 1964, Sched; Delhi Development Act, 1957, S. 16 (before 1963 amendment); J&K Town Planning Act, 1940, S. 31. Bombay Town Planning Act, 1954, S. 11 (now repealed in Maharashtra) Mysore Town and Country Planning Act, 1964, S. 72.

Principle

Act in which Provided

7. If any person, without the permission of the Collector required by the Act has erected or re-erected, added to or altered any wall or building so as to make the same project beyond the street alignment or the building line prescribed by and scheme made under this Act, then any increase in the market value resulting from such erection, re-erection, addition or alteration shall be disregarded.
8. When the owner of the land or building has, within two years preceding the date for determining the market value filed a return under any enactment in force, of the rent of the land or building to the Government or any local authority, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct, and the market value may be determined on the basis of such rent.
- Provided that where any addition to, or improvement of the land or building has been made after the date of such latest return and previous to the date with reference to which the market value is to be determined the court may take into consideration any increase in the letting value of the land or building due to such addition or improvement.
9. Any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market value is to be determined unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair, shall be disregarded.
10. Any outlay or improvement on, or disposal of the land acquired which, having regard to the time at which they were made and other circumstances, appear to have been commenced, made or effected with intent to obtain increased compensation.
11. When any interest in any land acquired under this Act has been acquired after the date with reference to which the market value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land.
12. If, in the opinion of the Court/Tribunal (as the case may be) any building is in a defective state from a sanitary point of view or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Court/Tribunal (as the case may be) considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair as the case may be, minus the estimated cost of putting it into such condition or state.
7. Bihar Restriction of Uses of Land Act, 1948, Sched. (except the words underlined); Bihar Town Improvement Act, 1951, S.71, Sched. B; Nagpur Improvement Trust Act, 1936; S.61, Sched.; U.P. Roadside Land Control Act, 1945, S.9 Sched. (except the words underlined); U.P. Nagar Mahapalika Adhiniyam 1959, S.176, Sched. II; U.P. Town Improvement Act, 1919, Sched.; Calcutta Improvement Act, 1911, S.71, Sched.; Punjab Town Improvement Act, 1922, S. 59, Sched.; Trivandrum City Improvement Trust Act, 1961, S.73, Sched.
8. Rajasthan Municipalities Act, 1959, S.82; Bihar Restriction of Uses of Land Act, 1948, S.2, Sched.; City of Jabalpur Corporation, Act, 1948, S. 293, Sched. I; Nagpur Improvement Trust Act, 1936, S.61, Sched.; U.P. Roadside Land Control Act, 1945, S.9, Sched.; U.P. Nagar Mahapalika Adhiniyam, 1959; S.176, Sched. II; U.P. Town Improvement Act, 1919, Sched.; Punjab Town Improvement Act, 1922, S. 59 Sched.
9. Bihar Restriction of Uses of Land Act, 1948, Sched., Bihar Town Planning and Improvement Trust Act, 1951, S.71, Sched.; Punjab Town Improvement Act, 1922, S.59, Sched.; City of Jabalpur Corporation Act, 1948, S.293, Sched. I; Nagpur Improvement Trust Act, 1936, S.61, Sched.; U.P. Nagar Mahapalika Adhiniyam, 1959, S.376, Sched. II; U.P. Roadside Land Control Act, 1945, S.9, Sched.; Calcutta Improvement Act, 1911, S.7, Sched.; M.P. Town Improvement Act, 1960, S.77.
- The words 'any outlay or improvements on, or disposal of' have been substituted for the words underlined above; U.P. Town Improvement Act, 1919, S.58 Sched.; Trivandrum City Improvement Trust Act, 1961, S.73, Sched.
10. Madras Town Planning Act, 1920, S.35(3); J.&K. Town Planning Act, 1940, §31.
11. Bihar Town Planning and Improvement Trust Act, 1951; S.71, Sched.; Bihar Restriction of Uses of Land Act, 1948, Sched.; City of Jabalpur Corporation Act 1948, S. 293, Sched. ; Calcutta Improvement Act, 1911, S.71, Sched. Punjab Town Improvement Act, 1922, S.59, Sched.; Rajasthan Municipalities Act, 1959, S. 82; U.P. Town Improvement Act, 1919, S.58 Sched.; U.P. Nagar Mahapalika Adhiniyam, 1959, S.376, Sched. II; U.P. Roadside Land Control Act, 1945, S.9, Sched.; Nagpur Improvement Trust Act, 1936, S.61 Sched.; Trivandrum City Improvement Trust Act, 1961, S.73, Sched.
12. Bihar Town Planning and Improvement Trust Act, 1951, S.71, Sched.; Bihar Restriction of Uses of Land Act, 1948, Sched.; City of Jabalpur Corporation Act, 1948, S.293, Sched.; Calcutta Improvement Act, 1911, S.71, Sched.; Punjab Town Improvement Act, 1922, S.59, Sched.; U.P. Town Improvement Act, 1919, S.58, Sched.; U.P. Nagar Mahapalika Adhiniyam, 1959, S.376, Sched. II; U.P. Roadside Land Control Act, 1945, S.9, Sched.; Nagpur Improvement Trust Act, 1936, S.61, Sched.; Trivandrum City Improvement Trust Act, 1961, S.73, Sched.

<i>Principle</i>	<i>Act in which Provided</i>
13. If, in the opinion of the Court/Tribunal (as the case may be) any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation the amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building.	13. Bihar Town Planning and Improvement Trust Act, 1951, S.71, Sched.; Bihar Restriction of Uses of Land Act, 1948, Sched.; City of Jabalpur Corporation Act, 1948, S.293, Sched.; Calcutta Improvement Act, 1911, S.71, Sched.; Punjab Town Improvement Act, 1922, S.59, Sched.; Rajasthan Municipalities Act, 1959, S.82; U.P. Town Improvement Act, 1919, S. 58, Sched; U.P. Nagar Mahapalika Adhiniyam, 1959, S.376, Sched. II; U.P. Roadside Land Control Act, 1945, S.9, Sched; Nagpur Improvement Trust Act, 1936, S.61, Sched; Trivandram City Improvement Trust Act, 1961, S.73, Sched.



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CHAPTER 12

**RECOMMENDATIONS ON OTHER MATTERS FOR
IMPROVEMENT IN THE LAND ACQUISITION ACT**

INDEX

PARA No.

1. Advisory Committee for preventing excessive acquisition of land for a public purpose	12·2 to 12·8
2. Recommendation	12·9 to 12·10
3. Recommendations with regard to Miscellaneous matters	12·11 to 12·14
4. Section 47—Enforcing of surrender of possession	12·15
5. Withdrawal from acquisition of land	12·16 to 12·21
6. Section 51—Exemption from Stamp Duty and Fees	12·22
7. Protection of compensation from Seizure or attachment	12·23
8. Proof by Certified Copies	12·24
9. Penalty for destroying trenches etc.	12·25
10. Cognizance of offences	12·26
11. Power to make rules.	12·27
12. Extracts from the draft Bill of the Law Commission referred to in the Report	Annexure.



Recommendations on other Matters for Improvement in the Land Acquisition Act

12.1. We have so far examined the scheme of acquisition of land with particular reference to principles which should govern acquisition of land for a public purpose and for companies, principles for determining compensation, procedural delays, extent of Government responsibility for rehabilitation of evicted families and feasibility of enacting a uniform law on land acquisition. We now propose to discuss other ancillary matters with the object of making an improvement in the working of the Land Acquisition Act. These matters relate to the setting up of an Advisory Committee for preventing excessive acquisition of land for a public purpose and the miscellaneous provisions of the Act.

Advisory Committee for Preventing Excessive Acquisition of Land for a Public purpose

12.2. We have already pointed out that the Land Acquisition Committee constituted under the Land Acquisition (Companies) Rules, 1963, plays an important role in advising the Government against excessive acquisition of land and taking of good agricultural land for companies. The advice of the Committee is intended to act as a valuable safeguard not only against excessive acquisition but also against acquisition of good agricultural land for companies. However, there is no provision either in the Act or the Rules made thereunder for preventing excessive acquisition of land or acquisition of good agricultural land when the acquisition is sought to be made by the State for a public purpose, and not for a company.

12.3. The authority exercising the power of compulsory acquisition has a large discretion as to the quantum of land to be acquired. Very often, lands become superfluous because they are acquired on the basis of a wrong estimate or calculation of the quantity of the land which would be required for a particular purpose for which it is afterwards found out by experience that less land than was originally supposed would be sufficient. We have repeatedly found that land is acquired merely as a reserve fund not only for the expansion of the project in hand but also for projects which were not yet even conceived so that extensive land without paying the market price of the day should be available to the State and thus the landowner is denied a fair deal. It is a device by which the price of the land is frozen without making any payment so that the land holder should not get the advantage of even the natural rise of price. We have already recommended that if the land acquired or any portion thereof is not subsequently used for the purpose for which it was acquired or for any other declared purpose within reasonable time, Government must

offer the land to the original owner/perpetual lessee/tenant of agricultural land who has acquired occupancy rights or their heirs as the case may be, on repayment of the amount of reasonable compensation or a proportionate portion thereof.¹ These provisions are intended to operate as a check against excessive acquisition of land by the State to some extent. It is, however, necessary to provide for a device which will prevent at the initial stage any intention to acquire land far in excess of the reasonable requirements of the acquiring authority.

12.4. The Land Acquisition Act of 1894 contained sufficient measures to allow acquisition of small parcels of property for the different schemes of the extent and magnitude which had to be considered in the past. However, as pointed out by the Supreme Court in the recent case of *Udai Ram Sharma and others v. Union of India*,² the schemes of the magnitude of the plan for the development of Delhi or for the establishment of an iron and steel plant did not have to be considered in pre-Constitution days.

12.5. In a developing country like ours, land is required for various public purposes such as roads, highways, railways, air fields, irrigation projects, housing, setting up of new towns, Security of the State, etc. In fact, there is hardly any field of development, economic or social, for which land is not required. Even in the field of setting up of river valley projects after Independence, it has been reported that over 13 lakh acres of land were acquired for 16 river valley projects after displacing a population of about 9 lakhs. Similarly, for the three Steel plants at Bhilai, Durgapur, and Rourkela, the Heavy Engineering Plant at Ranchi, and the Heavy Electricals Plant at Bhopal, about one lakh acres were acquired which resulted in the displacement of about 16,000 families.

12.6. Apart from acquisition of land for industrial development, a large-scale acquisition is also being made for other public purposes. It was suggested by some persons that a statutory ban should be placed on acquisition of good agricultural land for a public purpose as well as for companies. We feel that it would not be practicable to impose a total ban on the acquisition of good agricultural land, for it is not feasible or desirable that land should be acquired in divided portions and wherever a large chunk of contiguous land is to be acquired for a big project it would not be possible or practical to avoid the acquisition of some good agricultural land also. It should also be remembered that acquisition of good agricultural land might become necessary in certain cases

¹. See para 2.43 of this Report.

². Decided on 7th February, 1968.

because it is located at a strategic place and is needed for the defence of the country and also for the development of agriculture itself as for irrigation projects, canals, agricultural institutions, seed-farms, and roads for the transport of the agricultural products.

12.7. There can be no two opinions on the question that good agricultural land should not be acquired unless it is absolutely necessary. We understand that instructions to this effect have already been issued by the State Governments. We do not, however, know how far these instructions have been implemented in practice. Apart from this aspect of the case, the executive instructions have no force of law and we would like to suggest a statutory device for preventing the acquisition of good agricultural land and acquisition of excessive land, agricultural or non-agricultural.

12.8. In the case of acquisition of land for companies, the existing rules require the Collector to submit a report to the appropriate Government *inter alia* clarifying that the area of land proposed to be acquired is not excessive, and where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land. Before making such a report, the Collector has to consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land. A copy of the said report is required to be forwarded by the Government to the Land Acquisition Committee, whose duty is to advise the Government on all matters relating to or arising out of acquisition of land under Part VII of the Act.³ However, there are no corresponding provisions in the Land Acquisition Act or the rules made thereunder for preventing—

- (a) excessive acquisition of land, agricultural or non-agricultural, and
- (b) acquisition of good agricultural land, where the acquisition is sought to be made by the Government for a public purpose under Part II of the Act. This is not a satisfactory state of affairs.

Recommendation

12.9. We, therefore, recommend that a Land Acquisition Committee should be set up under the Act for advising the Government in respect of the Land Use Policy in the matter of large-scale acquisitions for any public purpose including the implementation of projects. The functions of the Committee would be to ensure that:—

- (i) the land which is already in the possession of the acquiring body is put to optimum use before permitting the proposed acquisition;
- (ii) an excessive acquisition does not take place;

(iii) the acquisition of good agricultural land does not take place where it can be avoided; and

(iv) the proposed acquisition is justified on the basis of high density norms.

12.10. The Committee should tender advice to the Government before issue of the notification under Section 4(1) of the Land Acquisition Act. The composition of the Committee should be left to the appropriate Government, but its members should include both experts on the subject and representatives of the people.

Recommendations with regard to Miscellaneous matters

12.11. We now propose to make our recommendations with regard to certain Miscellaneous matters which are essential for improving the working of the Land Acquisition Act.

12.12. (1) **Section 3(b)—“Person interested”.**—The expression ‘person interested’ has been defined in the Land Acquisition Act, 1894, as well as in the Requisitioning and Acquisition of Immovable Property Act, 1952. The expression as defined in Section 3(b) of the Land Acquisition Act has been adopted by the Law Commission with some changes in the light of the definition given in the latter Act.⁴ The definition of the expression may be adopted with verbal changes suggested by the Law Commission. Moreover, the definition may be amended suitably so as to include also owners, occupiers and persons whose names are registered in the revenue record. Though these persons seem to be included under the present definition, we feel that it is desirable to make the definition more explicit for the purpose of clarity.

12.13. (2) **Local Authority.**—The second proviso of Section 6(1) and Section 50 of the Land Acquisition Act refer to “local authority”. The Act, however, does not define this expression. The General Clauses Act defines “local authority” as a “Municipal Committee, District Board, Body of Port Commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local board.” The Law Commission has defined “local authority” to include a town planning authority. We are of the view that a local authority should include the town planning and town improvement authorities as we have suggested that acquisition of land should be made for these authorities as well only under the Land Acquisition Act.

12.14. (3) **Power to summon and enforce attendance of witnesses and production of documents—(Section 14).**—For the purpose of enquiries under the Land Acquisition Act, the Collector is empowered

³ See Rule 4 and Rule 3(5) of the Land Acquisition (Companies) Rules, 1963.

⁴ See Section 2(j) of the draft Bill of the Law Commission.

⁵ See Section 2(i) of the draft Bill of the Law Commission, page 53 of the Tenth Report-Annexure.

ed by Section 14 to summon and enforce the attendance of witnesses and production of documents, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure. Section 64* of the draft Bill of the Law Commission which corresponds to this provision empowers the Collector in addition to examine the witness on oath, receive evidence on affidavits, issue commissions for examination of witnesses and requisition any public record from any court or office. We recommend that Section 64 in the draft Bill of the Law Commission which is more elaborate than Section 14 of the Act may be adopted.

Section 47—Enforcing of surrender of Possession

12.15. Section 47 of the Land Acquisition Act provides that in case the Collector is opposed or impeded in taking possession of any land under the Act, he shall, if a Magistrate enforce the surrender of the land to himself and if not a Magistrate apply to a Magistrate, or to the Commissioner of Police for the purpose and that such Magistrate or Commissioner shall enforce surrender of the land to the Collector. We recommend that Section 47 of the Land Acquisition Act may be adopted subject to the modification that the Collector shall be entitled to enforce the surrender of the possession of the land only after he has paid or deposited the whole estimated amount of compensation in court or 90% of the amount when acquisition is made in an emergency.

Withdrawal from Acquisition of Land

12.16. Section 48 of the Act recognises the right of Government to withdraw from the acquisition of any land provided—

(i) it had undertaken possession, or

(ii) the case is not one covered by Section 36. Section 36 occurs in Part VI of the Act which deals with temporary occupation of the land for which an agreed amount of compensation is paid. This section empowers the Collector to take possession of the land on payment of the agreed amount of compensation or on making a reference to the court for determination of such compensation. The Act authorises temporary occupation for a period not exceeding three years from the commencement of occupation.

12.17. We have considered the provisions of Section 48 and are of the view that the same should be retained with an addition that in case of dispute as to the amount of compensation under sub-section (2) of Section 48, the Collector shall refer the same to the court for decision.

12.18. Section 49 of the Land Acquisition Act lays down that the provisions of this Act shall not be enforced for the purpose of acquiring a part only of any house, manufactory or other building, if the

owner desires that the whole of such house, manufactory or building shall be so acquired. The Maharashtra State Road Transport Corporation has, while commenting on this provision, pointed out to us certain practical difficulties experienced by the Corporation in cases where a part of the land proposed to be acquired forms part of the huge compound of factories. In such cases, the land being appurtenant is deemed to be a part of the manufactory. The Corporation has urged that the Act in an attempt to remove the hardships of the land-owners when only a part of their house is acquired but has completely overlooked the tremendous burden it puts on the body for whom the house is acquired. As the whole of the land may not be necessary for the purpose of the acquiring authority, it has been suggested that Section 49 may be deleted or at least the word 'manufactory' be deleted from there. In case Section 49 is to be retained, the Corporation wants the proviso to sub-section (1) of that section to be so amended that where the land-holder exercises the option given under the first proviso to section 49(1), he should not be allowed to rescind it later.

12.19. We feel that the suggestion of the Maharashtra Road Transport Corporation for treating the option as final, if accepted, is likely to cause hardship to the landowner. As such we do not accept the same. We, however, feel that a suitable time limit may be prescribed for withdrawing the option by the landowner.

12.20. We recommend that the provisions of Section 49(1) of the Act, may be adopted subject to the provision that the owner of the land will have option to withdraw or modify his expressed desire that the whole of such house etc. should be acquired, within 30 days from the date of service of notice upon him of the intended acquisition in respect of which notice under Section 4(1) has already been issued.

12.21. We find that Section 49 refers only to the acquisition of a part of the house, manufactory or building and as such acquisition of a part of land would not fall under its purview. We are of the view that the provisions of Section 49 should also be made applicable to land as well in certain cases, and a new provision should be incorporated in the Act providing that in cases where only a part of the land is acquired and the landowner desires that the whole of his land should be taken on the ground that the retention of the remaining part has become uneconomical for him, the Collector may either acquire the whole of the land or in case where he is satisfied that the plea of the landlord is not tenable shall refer the matter to the court for determination whether or not the retention of the remaining part has become uneconomical for the owner. In such an event, he can take possession

*. Vide Annexure.

?. Vide Annexure

of the part of the land in respect of which a notification under Section 4 has been issued after complying with all the relevant provisions of the Land Acquisition Act.

Section 51—Exemption from Stamp Duty and Fees

12.22. Under Section 51 of the Land Acquisition Act, the award or the agreement made under this Act are not chargeable with stamp duty and no person claiming under any such award or agreement is liable to pay any fee for a copy of the same. Our scheme provides for an agreement as well as an order of the court in respect of an award by the Collector. Section 51 of the present Act may, therefore, be retained subject to verbal changes as suggested to therein corresponding to Section 69 in the draft Bill of the Law Commission.

Protection of Compensation from seizure or Attachment

12.23. We recommend that Section 70,* of the draft Bill of the Law Commission which is new may be adopted. This section protects compensation from seizure or attachment where such compensation is awarded in respect of acquisition of land which is not liable for attachment for sale in execution of a decree or order of any Civil Court.

Proof by Certified Copies

12.24. In Section 71,** of the draft Bill of the Law Commission, a provision has been made to the effect that in any proceeding under the Land Acquisition Act, a certified copy of the registered document may be accepted as evidence of the transaction recorded in the document without the necessity of production or proof of the original. This provision may be adopted as it would be very helpful for adducing evidence of market value on the basis of certified copies of sale-deeds when the parties to the sale-deed are reluctant to produce the original in the court.

Penalty for Destroying Trenches etc.

12.25. Section 46 of the Land Acquisition Act prescribes a penalty for obstructing acquisition of land and destruction of trenches etc. This section prescribes an imprisonment up to one month or a fine up to Rs. 50 or both. The Law Commission has recommended the enhancement of these penalties to six months or a fine up to Rs. 500 or both in sections 77 and 78* of their draft Bill. We recommend the adoption of sections 77 and 78 subject

to the modification that the term of imprisonment should not exceed 3 months and a fine of Rs. 250 only

Cognizance of Offences

12.26. Section 79* of the draft Bill of the Law Commission provides that no court shall take cognizance of an offence under sections 77 and 78 except on a report in writing by an officer authorised in this behalf by the appropriate Government. This provision may be adopted.

Power to make Rules

12.27. Under Section 55 of the Land Acquisition Act, the power to make rules vests in the appropriate Government. However, the power to make rules for carrying out the purpose of Part VII of the Act which relates to acquisition of land for companies is exercisable only by the Central Government. In order to ensure uniformity of such rules, we recommend that the power to make the rules should be vested only in the Central Government.

(Sd.) Anand Narain Mulla
Chairman.

(Sd.) N. G. Ranga.
(Sd.) Vijay Kumar Trivedi.
(Sd.) Liladhar Kotoki.
(Sd.) Onkar Lal Bohra.
(Sd.) A. D. Mani.
(Sd.) Z. A. Ahmed.
(Sd.) P. K. Nambiar.*
(Sd.) Sharda Mukherjee.
(Sd.) N. S. Mahida.
(Sd.) K. Sen.*
(Sd.) Randhir Singh.
(Sd.) Triloki Singh.
(Sd.) Kanwar Lal Gupta.
(Sd.) V. Krishnamurthy.
(Sd.) Jaipal Singh.
(Sd.) Arun Prokas Chatterjee.*
(Sd.) Brahm Prakash.
(Sd.) A. Sreedharan.
(Sd.) C. K. Chakrapani.
(Sd.) Udit Narain Sharma.**

(Sd.) D. B. Kulkarni
Member-Secretary.

8. Vide Annexure.

9. Vide Annexure.

*The Member signed with the remark "subject to a Note of Dissent on certain some points." No Note of Dissent has, however, been received from these Members.

Note.—Members who did not agree with the recommendations embodied in the draft Report of the Committee were requested to send their views, if any, for being incorporated in the Report by a specified date and were informed that in case this was not done, it would be assumed that they agreed with the recommendations made in the Report. No communication has been received from Shri M. B. Raja Rao. Dr. Mahadev Prasad has informed the Chairman that as he did not participate in the deliberations in the final stage, he does not consider it proper to associate himself with the recommendations made.

**Chairman has signed the Report on behalf of Shri Udit Narain Sharma by virtue of authority given by the Member.

ANNEXURE

Extracts from the draft Bill of the Law Commission referred to in the Report

Section 2(i) 'Person interested'

The expression 'person interested' includes all persons claiming, or entitled to claim an interest in compensation payable on account of the acquisition or requisitioning of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

(Ref. Para. 12.12)

Section 2(i)

"Local authority" includes a town planning authority.

(Ref. Para 12.13)

Section 64

The Collector or the competent authority, while holding an enquiry or proceeding under this Act, shall have all the powers of a Civil Court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of a document;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from court or office;
- (e) issuing commissions for examination of witnesses.

(Ref. Para. 12.14)

Section 70

Where any compensation is awarded or awardable under this Act in respect of the acquisition of any land which is not liable under the law for the time being in force to attachment or sale in execution of a decree or order of any Civil Court, then the following provision shall apply :—

- (a) such compensation, before or after it is actually paid to the person entitled to receive the same shall be exempt from seizure or attachment by process of any court :—
 - (i) at the instance of a creditor, for any demand against a person entitled to such compensation, or

(ii) in satisfaction of a decree or order of any court; and

- (b) notwithstanding anything to the contrary in any law for the time being in force, neither official assignee nor the official receiver appointed under any law relating to insolvency shall be entitled to proceed against or to have any claim on any such compensation.

(Ref. para. 12.23)

Section 71

In any proceeding under this Act, a certified copy of a registered document (including a copy given under Section 57 of the Indian Registration Act, 1908) may be accepted as evidence of the transaction recorded in the document, without necessity of production of proof of the original.

(Ref. Para 12.24)

Section 77

Whoever wilfully fills up, destroys, damages or displaces any trench or mark made under Section 4 shall be punishable with imprisonment for a term which may extend to five hundred rupees, or both.

(Ref. Para 12.25)

Section 78

Whoever contravenes any provision of this Act, or any rule made thereunder, or any order made or direction given under this Act, or obstructs the lawful exercise of any power conferred by or under this Act, shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to five hundred rupees, or both.

(Ref. Para 12.25)

Section 79

No court shall take cognizance of an offence under Section 77 or 78 except on a report in writing of the facts constituting such offence made by an officer authorised in this behalf by the appropriate Government.

(Ref. Para 12.26)



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MINUTES OF DISSENT



Name of Member

Points of Dissent

1. Shri D. S. Desai

1. Justiciability of "public purpose".

2. Forum and Procedure for determining compensation.

3. Fixing of Time Limits for acquisition.

4. Special power for acquisition of Land in cases of Urgency/
Emergency.

5. Advisory Committee for preventing excessive acquisition of
land for public purpose.

2. Shri Sheel Bhadra Yajee

: Compensation

3. Sarvashri Sheel Bhadra Yajee,
B. Shankaranand and others

: Public purpose



1. Justiciability of "Public Purpose"

Though there are very weighty reasons for the recommendations of the Committee, in Chapter II, para 31, that the public purpose should be made justiciable by amending Section 6 of the Land Acquisition Act, 1894, (hereinafter called "the Act"), and perhaps this may have been the intention of the framers of the Constitution, considering the manner in which Article 31(2) is framed, nevertheless, the framers of the Constitution have, in sub-article (5) expressly, and advisedly saved existing laws after much anxious consideration and prolonged debate. And, it is significant to note that Acts passed even after the Constitution, for certain purposes specified, sub-article (2) of Article 31 is not to apply! Consequently, personally I do not think it necessary to disturb the present provisions, which, to my mind, already give sufficient protection, to the subject; and are, if I may say so, also in consonance with the present trend of thought, that the *Legislature is the best judge of public purpose and of the adequacy of compensation*. But quite apart from this, I think there is nothing wrong in the present law. Due regard is given to the declaration of public purpose by the Legislature and this is properly so; and since the courts do interfere on grounds of *mala fides* and also colourable exercise of power, unfair discrimination and the like, I personally, can see little reason, for interference. I am, therefore, with due respect unable to agree with the majority that section 6 of the Act should be amended to provide in every case justiciability of the public purpose. One of the main difficulties of acquisition, today is delay due to prolonged disputes, before officers and interminable litigation in the courts; and though it is quite true that justiciable questions ought preferably to go to the Courts, we ought not to lose sight of the fact that a man always wants to get his compensation without delay. On this ground also—and since I believe that the change suggested might lead to unnecessary litigation and consequent prolongation of the proceedings,—the present provision, in respect of public purpose, need not be changed.

2. Forum and Procedure for Determining Compensation

In Chapter 6 of its draft report, the Committee has recommended that the determination of compensation should be left to the Courts, which alone are in a position to inspire confidence in the general public. What the Collector should do, unlike as at present, is to make an offer of compensation to the party whose land is acquired on the basis of the material available with him. If that offer is accepted by the land owner/person interested, the matter ends, but if he does not expressly accept that offer or he does not communicate his reaction to the offer, it should be taken to be a refusal in which case the Collector should immediately thereafter refer the matter to the Court, specially provided for

dealing with the land acquisition cases. The reasons for the Committee coming to this conclusion are summarised in the report as under:—

- (1) The draft awards submitted by the Land Acquisition Officer to Government were incomplete and defective in many respects.
- (2) A large number of references are made to the Court because the awards given by the Collectors are not satisfactory.
- (3) It had come in evidence before the Committee that the compensation has been enhanced in 90 cases out of 100 which have gone to the Court.
- (4) The Executive Agency *i.e.*, the Collector cannot be regarded as the proper forum for determination of compensation, firstly because complicated legal questions often arise and the Collector is not in a position to understand and appreciate the implications connected with the valuation of the land and consequently the approach of the Collector to the problem of compensation has very frequently been biased. The Committee concludes by saying that the "Executive mind perhaps by habit and tradition frequently finds it difficult to hold the scales even between the State and the Citizen and repeatedly tilts it in favour of the State."

I regret, I am unable to agree either with the recommendation of the Committee or the observation made by it which would appear to cast aspersions on the machinery of the Government which I am sure, it is not the intention of the Committee to do. The Committee itself has pointed out that only two State Governments, *viz.*, Orissa and Gujarat have favoured the system of the compensation being determined by the Courts instead of by the Executive Agency. But the Committee has come to this conclusion because there has been a consensus of opinion among the persons affected by land acquisition that "the determination of compensation should be left entirely to an independent agency of the Courts". I find myself unable not to give consideration to the almost unanimous views of the State Governments. There are no doubt many defects in the existing system, and we are keen on seeing that these defects are removed. Nevertheless it would be difficult to agree with the observations that the "executive mind perhaps by habit and tradition frequently finds it difficult to hold the scales even."

I regret I cannot also agree even with the substance of the recommendations. My reasons are as follows:

- (1) It is not the experience in Maharashtra that in 90 cases out of 100, the amount of compensation is increased by the Courts.

(2) Section 11 of the Land Acquisition Act, 1894, in its application to the State of Maharashtra, provides that the draft awards, where the compensation exceeds Rs. 10,000 are scrutinized by the valuation experts and are further scrutinised from the angles of propriety and financial implications, at Government level, before they are finalised. This should leave little scope for land owners to complain about the quantum of compensation awarded to them. *Maharashtra and Gujarat are probably the only States in the Indian Union which provide for the awards to be scrutinized at the preliminary stage, before they are declared.* This is a healthy provision and is calculated to defend the interests of the person whose property is acquired and to give him a fair deal.

(3) The Government has recently taken a decision that all Land Acquisition Officers should be at least of the Deputy Collector's i.e. Class I Service level which ensures that officers with integrity, good academic background and considerable revenue experience will be drafted for this purpose.

(4) There is a separate Town Planning and Land Valuation Department, staffed by competent and knowledgeable persons, whose expertise is available, and used in arriving at the quantum of compensation.

(5) An intensive scheme of training is proposed for the Land Acquisition Officers, so that they may be able to function both effectively and judiciously, so that the number of complaints or references to the Court may be reduced to the minimum.

I am afraid the recommendations made by the Committee would have a very adverse effect. The suggestions made by the Committee would appear to have the effect of encouraging every person, whose land is acquired, to go to the Court for one reason or the other because he loses nothing by making an attempt to get a higher compensation than that offered by the Collector.

It will also be appreciated that the procedure of making reference in all cases of rejection of the Collectors' awards or want of replies from the land owners, to the Court, would mean interminable delays. In consequence, the desire of the Committee for expeditious settlement of the Land Acquisition cases would be frustrated rather than fulfilled.

3. Fixing of Time Limits for Acquisition

In Paras. 7.49 and 7.51 of its report the Committee, accepting the recommendations of the Law Commission have suggested that the time limit for each stage of acquisition if stipulated in the Act should be of a mandatory nature as otherwise no useful purpose could be served in incorporating the same in the Act. Therefore, the Committee have come to the conclusion that an overall time limit

from the date of issue of Notification under Section 4(1) upto the date of reference to the court should be prescribed. Accordingly the Committee have fixed the following periods:—

(1) 12 months from the date of issue of notification under section 4(1) upto the date of reference to the court in normal cases of acquisition. For very good reasons to be recorded in writing this period may be extended by another 3 months.

(2) In the case of acquisition of land for big projects (100 acres and more), 12 months from the date of issue of Notification under section 4(1). For good reasons again to be recorded in writing the period may be extended by another 6 months.

The Committee have considered that these limits are adequate both in normal cases as also in the cases of acquisition of land for big projects particularly as in the latter case the project notification can be issued two years before the date of issue of Notification under Section 4(1) of the Act. The Committee have referred to the fact that officials represented before them that it would not be practicable to complete the proceedings within the time limit stipulated by the Committee "as a huge amount of work is involved in planning, determining the location, settling the actual site, measuring, peg marking, preparing the plans of the land, making an estimate of the cost of the land etc. and in scrutiny of the proposal at various stages by different officers." The Committee however have not agreed with these views and has opined that since the Government has vast resources at its disposal it should not be difficult for the Government to speed up its work so as to complete it within the time stipulated by the Committee.

On the expiry of the period or the extended period mentioned by the Committee the Notification under Section 4(1) will automatically stand cancelled and the proceedings for acquisition will have to be started *de novo*.

I regret I am unable to agree with the recommendations of the Committee. I consider the recommendations impracticable. By a recent amendment the time limit between the notification under section 4 and the notification under section 6 has been fixed at 3 years, after the expiry of which period, the notification under section 4(1) will stand automatically cancelled. To go very much forward than this and suggest that the period between the notification under section 4(1) and the date of reference to the court should in normal cases be 15 months and in the case of acquisition of land for big projects at 18 months, at the most would be to suggest something which apart from being impracticable would in the vast majority of the cases be a nullity unless either the land acquisition staff and the ancillary machinery is multiplied many fold and unless there is a revolutionary improvement around. The implications of the recommendations of

the Committee is that all the procedure of issuing notices, hearing objections etc. which are prescribed under the Land Acquisition Act should be completed within a period of 15 months in normal cases and 18 months in the case of notification for project areas. The consequences of the recommendations of the Committee and the considerable financial loss that will be caused in the case of acquisitions should have been considered by the Committee before the recommendations were made.

Now whereas there is much to be said both on the side of the majority of this Committee in their endeavours to shorten the period for acquisition, because of the really extraordinary delays which have so far taken place, there is also something to be said for the difficulties universally expressed by the officers regarding the enormous amount of work involved in acquisitions. I think, the majority will agree that in putting very short periods, which cannot in practice be carried out, we would defeat the very purpose for which these amendments are suggested because, if the periods are exceeded, we go back to the beginning and have to start all over again. Consequently with great respect, I cannot entirely agree with the periods set up; and whereas I see the very laudable intention of the Committee in drastically cutting down these enormous delays which have led to so much unrest and dissatisfaction amongst the people whose money has been tied up for considerable periods, at the same time I am of the opinion that if we are to further the intention of cutting down these delays, then we ought to have some more realistic periods which can, at least, in most cases be adhered to, without the necessity for a lot of work going waste, and the acquisition officers having to start all over again. To achieve this very laudable purpose of the Committee I think the following periods would be more reasonable; or at any rate periods which can be adhered to in the majority of cases. I want to make it plain that I do not wish to criticise the Committee's suggestions; but I cannot help feeling that with all the evidence before us, if we ignore the objections of the officers merely on the ground that Government has "vast resources at its disposal and, therefore, it should not be difficult to speed up the work to this timetable", we might find that instead of reducing the periods for acquisition, we have unwittingly increased and duplicated it, in that in a large number of cases the Acquisition Officers may have to start all over again. It is only with the intention of furthering the purpose of the Committee of shortening the process, that I am suggesting some what different periods.

In normal cases of acquisition the notification under section 6 should be issued within a maximum period of 18 months of the issue of notification under section 4. In case this is not done the notification under section 4 shall be treated as automatically cancelled.

In case of projects i.e. where acquisition is for 200 acres and more the notification under section 6 should be issued within 18 months of the issue of

the notification under section 4(1). In case this is not done the notification under section 4 shall stand automatically cancelled.

4. Special Powers for Acquisition of Land in Cases of Urgency/Emergency

In Chapter 3 of their Report the Committee have expressed approval of the recommendations of the Law Commission with regard to the use of special powers in cases of urgency. The Law Commission recommended the use of the provision only for certain specified emergencies. The power conferred by section 17(1) of the Land Acquisition Act 1894 of the use of the urgency-clause in respect of any waste or arable land needed for public purpose or of for any company has been omitted. The emergencies specified by the Law Commission include requirements of railway administration, or maintenance of traffic; maintenance of road communications, channels, river banks etc.

Here, again, I am not entirely in agreement with my learned colleagues. Emergency from its very nature cannot be defined and must be left elastic; because, speaking for myself, I cannot envisage every circumstance which could be described as 'emergent'. Of course, the Commission has laid down the usual well recognised incidents of emergency which already exist in the Act; but I think that the framers of the Act were wise in not attempting to define every circumstance of emergency. Where as we may agree that we restrict and define incidents of emergency that may apply to land which is not waste or arable; I think that in the case of waste and arable land if it be needed for a public purpose by Government, as opposed to a company, then we ought to be able to take such land under the Urgency Clause without restricting Government to those special incidents of emergency enumerated. Again, I am not entirely in agreement with the suggestion that merely because certain incidents have occurred where good cultivable land has been acquired under the Urgency Clause, this necessary provision should be deleted. The Committee itself having pointed out this abuse; I think it ought to be left to the good sense of Government to see that it does not waste its agricultural wealth by acquiring really the good cultivable land for this purpose when other land is easily available. It is trite learning that hard cases make bad law; and I think here, if I may say so, with respect, we are going this by taking away a really useful and elastic provision, merely because it is capable of being abused and has indeed been abused in some few cases. Speaking from my experience as Minister in charge of this subject, we have issued strict instructions to our officers that the State ought not to take under the Urgency Clause or any other Clause, good cultivable land which we consider the wealth of the State generally, when inferior land is available; and, we take very strict steps to put down any abuse.

In case of projects i.e. where acquisition is for 200 Courts in respect of the Urgency Clause, I think, this would be self-defeating; because, in that case

I fully apprehend that no land can ever be taken by way of urgency. People being what they are, and the sentiment attached to land in India being what it is, our experience is that they will fight tooth and nail to keep even unprofitable plots as long as possible, and raise all kinds of obstacles legal and otherwise; being aided and abetted by their legal advisers in pursuit of their object of tiring out Government by dragging the case through various courts, and tribunals. If we are going to have the Urgency clause at all, to hedge it around with appeals to Government which normally take some time and then to the Courts, and it is common knowledge that the arrears in Courts are so enormous that the chances of cases under an Urgency Clause even coming up for hearing are very remote. I submit that it would be merely defeating the very object of the Urgency Clause. I confidently predict if this suggestion of appeals to the Government and the Courts etc., is carried out, then nothing will be taken under the Urgency Clause—however genuine the urgency and however disastrous the consequences of not getting hold of the land in such an emergency.

5. Advisory Committee for Preventing Excessive Acquisition of Land for a public purpose

In Chapter 12 of its Report, the Committee has recommended that a Land Acquisition Committee should be set up under the Act for advising Government in respect of the Land use policy in the matter of large scale acquisition for any public purpose including the implementation of projects. The functions of the Committee would be to ensure :—

- (i) that the land which is already in the possession of the acquiring body is put to optimum use before permitting the proposed acquisition;
- (ii) that excessive acquisition does not take place;
- (iii) that the acquisition of good agricultural land does not take place where it can be avoided; and

(iv) the proposed acquisition is justified on the basis of high density norms.

2. While the intention of the Committee in seeing that excessive acquisition or acquisition of good agricultural land is prevented is indeed laudable, I am afraid I am unable to see why it is necessary for such a Committee to be constituted in the case of normal acquisition for major projects. In the case of acquisition of land for Companies, there is provision in Part VII of the Land Acquisition Act for the appointment of a Committee. This is because it is desirable that the State Government should be advised properly with regard to the need of the acquisition whether excessive land is being acquired, whether negotiations for obtaining the land from private purchase have failed, details of composition of the companies, whether less costly lands are available and if so whether efforts to get them have been made by the company etc. etc. In respect of acquisition of land under other sections of the Land Acquisition Act, the functions which the proposed committee are expected to perform are already being catered for by the rules and instructions which have been issued by the Maharashtra Government from time to time to prevent excessive acquisition, the fullest utilisation of the acquired land, the avoidance wherever possible of acquisition of good agricultural lands, and the consideration of high density norms when land is acquired. It may also be pointed out that in respect of major projects a considerable amount of preparatory work, examination by technical experts, considerations of economic and technical feasibility, competent advice with regard to location of large scale projects from all considerations both technical and non-technical are already involved before proposals for acquisition are submitted for the consideration of Government. It is not necessary to duplicate these efforts by the appointment of a separate committee which will only have the effect of delaying matters more considerably and introducing embarrassing situations particularly in the matters affecting acquisition of land for big projects where technical and economic considerations will have to outweigh all other considerations.

On Compensation

What is being suggested in para 5.5 of the draft Chapter is that the amendment made in Article 31(2) of the Constitution should be negated.

The policy statement of Shri Jawaharlal Nehru while introducing in the Constitution (Fourth Amendment) Bill represents in a balanced manner, a policy consistent with the Directive Principles of the Constitution. It is being proposed on behalf of the Committee in the Draft Chapter that the above policy based on the Directive Principles of Constitution should be given up. The recommendation in para 5.5 of the Draft Chapter can only result in taking back the country to the stagnant situation before the 4th Amendment to the Constitution was enacted.

We received evidence in regard to two conflicting aspects of the impact of the present law as incorporated in Section 23 and Section 24 of the Land Acquisition Act, 1894, as interpreted by courts.

What is the basic cause of this paradoxical impact of the present law which on the one hand denies compensation to enable a cultivator owner in the rural area to reinstate himself and on the other lavishes compensation on a scale in which solatium alone is more than 4 to 8 times the compensation paid in the rural area?

The present law makes it legal 'to give all speculative rise in land values upto the date of notification under Section 4 and also requires that the compensation should be determined so as to include the present value of future potentiality.

Such a law would nurture and in fact, does nurture speculative rise in land values! This law sanctifies speculative rise in land values as legal. Can it be considered just a equitable principle?

As a consequence of the present law the resources of the community which are meant to be used for a maximum return in terms of economic growth and social benefit etc. are being devalued. This law nurtures frustration and dis-satisfaction among the public. The Government and the community is required to pay the penalty of potential value for having created the potential by investing for economic growth etc.

Another consequence is that those whose lands are not acquired may get all the benefits of further rise in land value on account of speculation and development effort when either their lands are acquired by Government or they sell the same to private parties.

Lastly, in the case of acquisition of land for urbanisation, when land is sold after development to private individuals, the new private owner is placed in a position of acquiring unearned incomes due to rise in prices in perpetuity (except where land is sold on a lease-hold basis subject to payment of part or whole of unearned income due to rise in prices.)

We had agreed that speculative rise in land values shall not be included as compensation.

We had also agreed to exclude rise in land values due to contemplated or specific State Action *i.e.*, not to give unearned increase in land values.

Thirdly, we had further agreed the cultivator—the owner shall be given a fair deal *i.e.* he must be placed in a position to reinstate himself.

These principles of policy should result in giving a fair deal and maintenance of an equitable balance between the citizen and the community.

The frame work or design of the draft chapter is based on the approach (para 5.5 of the draft) that the articles 31(2) of the Constitution as amended should be ignored, the Chemudu case ruling be endorsed in regard to payment of speculative rise in land values and potential values.

The devices proposed for containing speculative rise in land values in fact amount to denying some part of speculative rise in the open market to the owners in the first stage, whereas the speculative rise as well as unearned increase in land values would be given to the owners in the subsequent stages of acquisition for expansion. Thus, the proposals amount to nothing more than a *status quo*—if not worse as explained below. What is being proposed is to amend all the measures already enacted in the country for containing speculative rise in the land value and nipping off unearned increase in land values. In short the devices proposed in the draft Chapter will not secure the objectives of policy as agreed.

To take the position that the current open market-value has been the guiding principle is not thus factually correct.

The Government of Madhya Pradesh amended the Central Land Acquisition Act, 1894, for eliminating speculative and unearned increase in land values for the Bhopal Capital. When this amendment was challenged in the High Court, the High Court observed, 'Now it cannot be denied that whenever a capital or a big industry is located in

a town or even in a city, land values are suddenly pushed up by prospective sellers and the increase in them during inter-regnum, between the date when it is known that the town will become more important and the date of acquisition of land may not represent its real value.' The draft chapter ignores this basic problem.

There is justification for a uniform policy in regard to compensation in dealing with this question. However, it is necessary to distinguish between ends of policy and the devices adopted to achieve such ends of policy.

The Land Acquisition Act, 1894, has resulted in gross inequity and frustration because the devices adopted are not based on policy which has relevance in the present economic and social context of the Nation.

Today the problem of urbanisation on a staggering scale is concerned mainly with dealing with the population thrown out from the rural India and which migrates to cities for work and existence.

The Planning Commission in the draft 4th Plan has concluded (in the chapter on Regional and Urban Development) that higher prices of land are one of the main obstacles in the way of public or private housing for poorer classes.

The proposed recommendations in the draft chapter can only result in massive growth of slums in the context of anticipated increase in urban population from 7-8 crores in 1961 to 15 crores in 1981. This basic problem has been ignored in the draft chapter.

The Recommendation in the Draft Chapter in effect Reject the Policy Adopted in U.K.

The measures adopted even by developed countries further confirm the policy objectives accepted by us. Any wholesome and fair policy of compensation must deny speculative rise in land values and (substantial part of) unearned increase in land values as part of compensation.

It is also our firm view that we should provide measures devices which would enable the cultivators—owners to reinstate themselves.

In case of large-scale acquisition of land involving large-scale displacement of families and occupations in non-urbanised areas, the principle of reinstatement should be applied by providing cash compensation as well as rehabilitation programmes.

So far as the objective of controlling speculative rise in land values is concerned, the devices adopted in the Kerala Land Acquisition Act, may prove adequate in regard to cases in category one *excepting* that instead of restricting the sum to be added to 20 to 25 per cent of the compensation on the basis of the date of project notification this addition should be related to over-all rise of prices over the relevant period.

An adequate policy for dealing with acquisition of land for urbanisation should provide for the following aims :—

- (i) Enforce land use in accordance with the land use prescribed in the Regional Development Plans,
- (ii) Exclude or mop off speculative and unearned rise in land values in the first phase of acquisition.
- (iii) Exclude or mop off unearned rise in land values on account of development of land acquired in earlier phases.
- (iv) Mop off unearned increments in land values from the new owners, who are sold or allotted developed plots; and
- (v) Mop off speculative and unearned incomes in land values from the owners whose lands are not acquired but who benefit from urbanisation.

The broad approach required for the dealing with aims one two and three could aptly be considered along with the provisions made in the Maharashtra Regional and Town Planning Act, 1966.

The Maharashtra Regional and Town Planning Act, 1966 has provisions for securing aim one.

The provisions of the Maharashtra Act, suffer from some anomalies.

The anomalies have arisen because the date of declaration of intention has not been prescribed as the material date for determining compensation in all cases.

There are, however, two arguments against the proposed amendment in the above para.

There is every justification for the policy of the Government that speculative rise in land values and unearned increase in land values after declaration of intention should not be given a part of compensation. It is for this reason that limited antedating approach has been suggested above. It can, however, be validly contended that rise in land values may not be due to speculative or unearned increase in land value alone. Land values can also rise due to inflationary situation in the country. If compensation is determined on the basis of limited antedating it can happen that by the time land is acquired and compensation paid, the real value of rupee may decline in an inflationary situation. As a consequence, compensation given can get devalued. It would, therefore, be necessary to make adjustments in the market value determined on the basis of changes in the real value of money. For instance, such adjustments may be made on the basis of index number of whole-sale prices of all commodities issued by the Economic Adviser, Government of India.

Since the wholesale price index is a regularly published authentic document, it would involve only an arithmetical calculation for making the necessary adjustments.

Secondly, land value in the case of agricultural land can also rise on account of improvements made for increasing agricultural productivity. It should be reasonable to permit compensation for improvements. Such a provision was included in the Kerala Land Acquisition Act, 1961, as amended by Act No. 4 of 1966.

It is suggested that Section 126(3) of the Bill may be accordingly amended as suggested in para 66.

The Fourth aim of policy is to "mop off unearned increments in land values from the new owners/leaseholders who are sold allotted development plots."

We would suggest that developed land should be leased out and not given as free hold. Such leases in the name of the President as Lessor are treated and protected as grants under Government Grants Act, 1895. The leases should provide for a clause for recovery bulk of unearned in sale in land values at the time of sale etc.

The primary object of the compensation policy—in areas where the elements of speculative and unearned rise in land values do not operate—*should be to apply principle of reinstatement in a viable manner.*

The following measures, are, therefore, suggested :

(i) In case of delay in declaring the award beyond the prescribed period either a sum equal to over-all general rise in prices during the preceding year or years be added to the compensation determined on the basis of the date of Section 4 notification or a fixed percentage per annum to be added for the delayed period provided the delay is not caused by the land-owners or Civil Courts.

(ii) The market value should be determined on the basis of the prevailing prices one year before the date of notification under section 4 or an average of 3 years, whichever is higher.

(iii) In cases where cultivated land is acquired, the market-value should be cross-checked with capitalisation of net income determined on the agricultural/Revenue Departments.

(iv) The market value would be determined on the basis of current use of the land.

The above approach should, by and large, result in the application of the reinstatement principle.

All the proposals given above, and in particular, measure for dealing with speculative/unearned increase in land values be constitutionally valid.

We are recommending the above proposals as they result in application of a uniform policy as approved by the Committee.



MINUTE OF DISSENT BY SARVASHRI SHEEL BHADRA YAJEE, B. SHANKARANAND,
ONKAR LAL BOHRA AND C. K. CHAKRAPANI

Public Purpose

There can be only one objective test of a public purpose *i.e.* all that will be calculated to promote the welfare of the people as envisaged in the Directive Principles of State Policy in the Constitution.

This concept of a public purpose should have found place not merely as a quotation from a Supreme Court Judgment but as the decisive definition of 'Public Purpose.'

The Report is not reconciled to this concept.

During discussions we had suggested that the inclusive definition of public purpose shall include :

'the settlement of land for agriculture with the weaker section of the people'.

U.P. Government had already amended the Act accordingly. This is in accordance with the Directive Principles of State Policy.—Yet the report has excluded this item. We would, therefore, reaffirm that if the inclusive definition of public purpose is at all necessary, this clause shall be included



**A SUMMARY OF THE MAIN CONCLUSIONS AND RECOMMENDATIONS
OF THE LAND ACQUISITION REVIEW COMMITTEE**



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Reference in the summary against each conclusion and recommendation relates to the relevant chapter and paragraph of the report in which the recommendation is made.



SUMMARY OF THE MAIN CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

Chapter I

1. Constitution of the Committee, its terms of reference and Scheme of the Report

During the consideration of the Land Acquisition (Amendment & Validation) Act, 1967, the Government of India gave an assurance on the floor of both the Houses of Parliament that a Committee will be appointed to go into the entire framework of the Land Acquisition Act, 1894. In pursuance of this assurance, the Land Acquisition Review Committee was appointed by virtue of Resolution No. 6-6/67-Gen.II, dated 27-7-1967, of the Government of India in the Ministry of Food, Agriculture, Community Development and Cooperation (Department of Agriculture). The composition of this Committee is given at the outset of the Report.

The terms of reference of the Committee are :—
To examine the scheme of acquisition of land for public purpose and companies in the public and private sectors under the Land Acquisition Act, 1894, with particular reference to—

- (i) principles which should govern acquisition of land for a public purpose;

- (ii) principles for determining compensation;

- (iii) reasons for administrative delays and remedial measures;

- (iv) extent of Government responsibility for rehabilitation of evicted families and recommendations about discharge of this responsibility; and

- (v) feasibility of enacting a uniform Central law on 'land acquisition' which may be applicable to the whole country although 'land acquisition' is in the Concurrent List.

The Committee has discussed the five specific terms of reference seriatim in Chapters 2, 3 and 5 to 11. The Constitutional requirements for compulsory acquisition and the approach of the Committee to the problem of land acquisition is discussed in Chapter 4. The recommendations of the Committee on other matter for improvement in the Land Acquisition Act are contained in Chapter 12.

A Summary of the main Conclusions and recommendations of the Committee is given Chapter-wise.



Principles which should govern acquisition of land for a 'public purpose'

1. Definition of 'public purpose'.—It is not possible to lay down any hard and fast definition of 'public purpose' which would meet the needs of the present and the future in a rapidly changing world. However, an inclusive definition of the expression should be given on the lines proposed in para 2.22.

[2.20 & 2.22]

2. What should not constitute a 'public purpose'.—Unless compelling circumstances (to be stated in writing) exist which render it necessary so to do, no proceedings for acquisition should be taken in respect of any land or building which has been acquired by the appropriate Government for a public purpose and which has been or is being put to use for the said purpose. Though it is not desirable to ban proceedings for acquisition in respect of any land or building which is already being used by a person or body of persons for a housing scheme or industry and the public purpose for which it is being acquired is the same, some way should be found out by Government to protect the interests of the genuine land owners or co-operative societies who are using or intending to use the land for a housing scheme or industry consistent with the proposed planned development.

[2.25 & 2.26]

3. Justiciability of 'public purpose'.—'Public purpose' should be made justiciable by amending the provisions of Section 6 of the Act suitably. Such

a provision would, in our opinion, go a long way in removing the apprehension of the public as regards the possible abuse of power in the name of public purpose.

[2.31]

4. Reverter of land in case of non-use for the purpose for which it was acquired.—Government may, within reasonable time, use the superfluous land for any other public purpose though acquired for a different public purpose, if it does not violate the directive contained in clause (a) of para 2.25. However, if the land acquired, or any portion thereof, is not used for the purpose for which it was acquired or for any other declared public purpose, within reasonable time, Government must offer the land to the original owner/perpetual lessee/tenant of agricultural land who has acquired occupancy rights, or their heirs, as the case may be, (unless he or they are not found after diligent enquiry) on repayment of the amount of reasonable compensation or a proportionate portion thereof. It should also be made open to the owner etc. or his heirs to claim back the said land on the above terms from Government, and if the Government fails to act in this matter, an action for reconveyance and possession of the superfluous land would lie in the Court.

[2.43]

Provisions on the above lines would operate as a check against excessive acquisition of land by the State.

[2.44]



Principles which should govern Acquisition of Land for Companies in the Public and Private Sectors

1. Retention of Section 40(1)(aa) and Section 41(4A).—It would not be wise to impose a total ban on acquisition of land for companies which are engaged or taking steps for engaging themselves in any industry or work which is for a public purpose. There is not enough justification for recommending the repeal of clause (aa) of Section 40(1) and clause (4A) of Section 41 of the Act.

[3.18]

2. Compliance with the Special Procedure prescribed by Part VII.—Subject to the changes herein-after suggested, the provisions of Part VII of the Act and the Land Acquisition (Companies) Rules, 1963, should be complied with in all cases of acquisition of land for a company other than a Government Company/Corporation/Body Corporate. In other words, Government Companies/Corporations/Bodies Corporate should alone be entitled to invoke the provisions of Part II when the acquisition is also for a public purpose.

[3.33]

3. Contribution by the State in case of acquisition for a Company for a Public Purpose.—Payment of contribution from the public funds should not be made obligatory for invoking the provisions of Part II in the case of Government Companies/Corporations/Bodies Corporate.

[3.46]

4. Other Recommendations : A. Reverter of Land.—(a) Action should be initiated by Government as a matter of course for declaring the transfer of land or a portion thereof to the company as null and void in every case where the land is not utilised within the specified or extended time for the purpose for which it was acquired;

(b) Where transfer of the land, or a part thereof to the company is declared by the Government as null and void on account of the non-utilisation of the land or a portion thereof, by the company within the time prescribed by the law and the land reverts back to the appropriate Government, Government should, within specified time not exceeding one year from the date of the reversion of the land, offer reconveyance of that land or part thereof, as the case may be, to the original owner or the perpetual lessee, or the tenant of agricultural land who has acquired occupancy rights, or their heirs as the case may be, provided the owner, the perpetual lessee, or the tenant of agricultural land who has acquired occupancy rights, or their heirs, as the case may be, can be found on diligent enquiry.

(c) The original owner, the perpetual lessee, or the tenant of agricultural land who has acquired occupancy rights, or their heirs, as the case may be, will have to refund the compensation received or a proportionate portion thereof before the reconveyance is sought.

(d) If the original owner, the perpetual lessee, or the tenant of agricultural land who has acquired occupancy rights or their heirs, as the case may be, do not seek reconveyance on the above terms within six months from the date of the offer by the Government, the land would revert in the Government absolutely free from all claims of the original owner, the perpetual lessee, or the tenant of agricultural land who has acquired occupancy rights or their heirs, as the case may be, and Government would be free to use that land for any other purpose or dispose of the same in any manner as it likes.

(e) The owner, the perpetual lessee, or the tenant of agricultural land who has acquired occupancy rights, or their heirs, as the case may be, would be entitled to move the Government for return of the land or portion thereof which is not utilised within the prescribed time by the Company for the purpose for which it was acquired.

(f) On such a motion, the Government should take action to declare the transfer of such land to the Company as null and void and revert it in the claimant.

(g) It would be open to the parties to move the Court for the appropriate relief in case the Government fails to take the requisite action on his motion as aforesaid.

[3.40]

B. Composition of the Land Acquisition Committee.—In order to make the voice of the representatives of the people more effective in the matter of acquisition of land for companies, the members to be nominated by the appropriate Government under clause (ii) of Rule 3(2) of the Land Acquisition (Companies) Rules, 1963 should include at least 5 M. L. As. fairly representative, as far as possible, of various sections in the Assembly. In the case of acquisition for the Union/Union Territories the Members of Parliament fairly representative, as far as possible, of various sections in Parliament should be appointed under this clause.

[3.41 & 3.43]

C. Incorporation of Rules in the Act.—The provisions of the Land Acquisition (Companies) Rules, 1963, should be incorporated in the Land Acquisition Act itself.

[3.44]

D. Amendment of Section 39.—Section 39 should be retained with the modification that where land is to be acquired for any company, no notification under Section 4(1) should be issued except by or with the previous consent of the appropriate Government.

[3.45]

Constitutional Requirements for Compulsory Acquisition and our Approach

The recommendations will have to be so framed as to satisfy the mandatory requirements of the Constitution for compulsory acquisition of land. This is how an examination of the constitutional background becomes relevant.

[para 4.1]

1. Right to Property under the Constitution.—The Right to Property is one of the Fundamental Right guaranteed by the Constitution. Under Article 19(1)(f), all citizens have the right to acquire, hold and dispose of property. Article 31 further protects the right to property by defining limitations on the power of the State to take away property without the consent of the owner. As soon as the interest of the community so requires, the State can, under Article 31, deprive the owner (citizen or non-citizen) of his property by authority of law subject to Payment of compensation if the deprivation is by way of acquisition or requisition of the property by the State. The obligation to pay compensation for acquisition of property has thus been raised to the status of a Fundamental Right and can be enforced in the highest court of the land.

[Para. 4.2]

2. Meaning of Acquisition under Article 31.—Under the Constitution, the term "acquisition" is used in a limited sense. It refers to a transfer of ownership of property to the State or to a Corporation owned or controlled by the State. Clause (2) of Article 31 is not attracted where there is mere deprivation of property short of acquisition. Hence, there is no obligation to pay compensation where a private owner is deprived of property by reason of the exercise of 'police' or regulatory powers of the State.

[Para. 4.4]

3. Distinction between acquisition under Art. 31(2) and Acquisition under Art. 31-A.—The Constitution makes a distinction in regard to the limitations for acquisition of Jagirs, Inams and other land tenures, described as estates, and other kinds of property. Under Article 31(2), the State is prohibited from making law for acquiring land and other property unless it is for a public purpose and unless it fixes the amount of compensation or specifies the principles for determining the same. However, Article 31-A(1)(a) lifts the ban to enable the State to implement the pressing agrarian reforms. Acquisition of 'estates' cannot be challenged on the grounds of absence of public purpose or for want of compensation or adequate compensation or on the ground of imposition or unreasonable restrictions on the right to hold and dispose of property.

[Para 4.6]

4. Constitutional requirements for acquisition.—Legislation implementing the recommendations in relation to acquisition of land other than "estates" will, however, have to satisfy the requirements of Article 31(2) as well as Article 14 of the Constitution.

[Para. 4.8]

5. Meaning of Compensation and its justiciability before and after the Fourth Amendment.—The American and the Australian Constitutions ensure payment of just compensation for taking of the property. The expression "compensation" is not defined in the Constitution. After the Constitution (Fourth Amendment) Act, 1955, it carries a meaning different from the one given to it in *Mrs. Bela Banerjee's case*. *Mrs. Bela Banerjee's case* laid down the following principles :—

- (1) The expression "compensation" in Art. 31(2) of the Constitution as originally enacted meant just equivalent of what the owner has been deprived;
- (2) The principles laid down by the legislature shall be only for the determination of the compensation so defined;
- (3) Whether the principles have taken into account the relevant elements to ascertain the true value of the property acquired is a justiciable issue to be adjudicated by the court;
- (4) The fixation of an anterior date for the ascertainment of the value of the property acquired without references to any relevant circumstances which necessitated the fixing of an earlier date for the purpose of ascertaining the real value is arbitrary.

[Paras 4.11 & 4.14]

After the Constitution (Fourth) Amendment Act, 1955, compensation fixed or determined on principles specified by the legislature cannot be permitted to be challenged on the somewhat indefinite plea that it is not just or fair equivalent. 'Compensation' means what the legislature justly regards as proper and fair recompense for compulsory expropriation of property and not something which by abuse of legislative power though called compensation is not a recompense at all or is something illusory.

[Para. 4.28]

The Fourth Amendment of the Constitution was expressly made to get over the effect of the earlier cases which had defined compensation as just equivalent. It is certainly out of the question that the adequacy of compensation (apart from compensation which is illusory or proceeds upon principles irrelevant to its determination) should be questioned after the amendment of the Constitution.

[Para. 4.30]

Article 19(1)(f) of the Constitution guarantees to the citizens the fundamental right to acquire, hold, and dispose of property subject to reasonable restrictions that may be imposed under Article 19(5) in the interest of the general public or for the protection of the interest of any Scheduled Tribe. Both Articles 31(2) and 19(1)(f) relate to property.

In the latest case of *R. C. Cooper & another v. Union of India*, the Supreme Court has now held that the validity of 'law' which authorises deprivation of property under Art. 31(1) and 'a law' which authorises compulsory acquisition of property for a public purpose under Art. 31(2) must be adjudged by the application of the same tests. According to the court, a citizen may claim in an appropriate case that the law authorising compulsory acquisition of property imposes fetters upon his right to hold property which are not reasonable restrictions in the interests of the general public.

[Para. 4.32]

The Law of Compulsory Acquisition of Land will thus have to satisfy the requirements of Articles 31(2), 14 and 19 as interpreted by the Supreme Court.

[Para. 4.41]

6. Acquisition for land-reforms and acquisition for other purposes—Difference between.—The Constitution (17th Amendment) Act, 1963, has further enlarged the scope of acquisition or requisition without payment of adequate compensation and also without any danger of its being challenged under Articles 14, 19, and 31 of the Constitution. There is no kind of agricultural estate or land which cannot be acquired by the State even though it pays an illusory compensation. The only exception is the second proviso added to Article 31-A(1) by which lands within the ceiling limit, applicable for the time being to a person personally cultivating his land, may be acquired only on paying compensation at a rate which shall not be less than the market value. This may prove to be an illusory protection because the ceiling may be lower by legislation and the State may leave the person an owner in name and acquire all his other rights.

[Para. 4.53]

The exclusion effected by Article 31, clauses (4) and (6) and by Arts. 31-A and 31-B would deprive a person of his Fundamental Rights conferred on him by Art. 31(2) and Arts. 14 and 19. The obligation to pay any compensation or adequate compensation does not thus arise in the case of land covered by Legislation falling within the scope of the exceptions made under these provisions. This fact has to be borne in mind while making any recommendations with regard to the quantum of compensation respecting immovable property left out of the purview of these provisions.

[Para. 4.55]

7. Principles governing the approach of the Committee.—As far as possible, every one who is deprived of his property by compulsory acquisition

should be enabled by the compensation awarded to him to place himself in substantially the same position in which he was before the acquisition. The community which benefits from the acquisition must also bear the burden of justly compensating the owner.

[Para. 4.56]

The object of the Constitution (Fourth Amendment) Act, 1955 was to make the Parliament or the State Legislature the sole judge on the question of compensation. A heavy responsibility is thus cast on the legislature to do the right thing and take a just and reasonable view particularly having regard to the apprehensions expressed in both the Houses of Parliament that the power conferred by Article 31(2) as amended may be misused.

[Para. 4.63]

It is, therefore, necessary to protect the interests of the individual by providing for fair compensation in case of all kinds of acquisition.

It is legally not possible to look at the question from the point of view of the State alone and completely ignore the injury caused to the citizen. There can be no understandable reason for holding that if an individual loses his land under a small scheme he should get a just compensation but if that land is acquired under a big project, he may be deprived of his land on payment of inadequate compensation simply because the State has not the funds to make a just payment. If the State wants to resolve this conflict of interests in its own favour, then it is necessary that the relevant Articles relating to Fundamental Rights in the Constitution should be suitably amended and not that the Constitution should be bypassed. Equitable compensation must be equitable both to the individual and to the community. The need for protecting the State against the payment of compensation based on speculative rise in prices in the case of large-scale projects is appreciated. While framing the recommendations on the quantum of compensation, both these aspects have been kept in view.

[Para. 4.64]

The Committee has tried to strike a balance between the conflicting claims of the individuals and the community.

[Para. 4.65]

Most of the States have enacted legislation abolishing the intermediaries, regulating tenancies and fixing ceilings on the land holdings. Over two million acres of land have so far been declared surplus by the ceiling imposed, and about half of the area has already been distributed.

[Para. 4.66]

A reasonable classification can be made between land which is declared surplus by a properly enacted law and other land for the purpose of determining compensation specially when the acquisition is to advance a laudable directive contained in the Constitution itself. The same approach cannot and should not be made in acquiring other lands which

cannot be declared surplus under any law. The need for protecting the interests of the individuals as against that of the State is much greater in the case of such acquisitions, and there appears to be no understandable reason why the rule of 'just equivalent' should not apply.

[Para. 4.67]

The Committee is fully aware of the imperative need for minimising the concentration of wealth in a few hands and the necessity of removing the social disparities for achieving the objectives of a welfare state envisaged by the Constitution. But this does not mean that when the State acquires property for its needs, it should not give a fair deal to the holders whom it forcibly dispossesses. There are other measures which can always be adopted by the State for removal of social inequalities.

[Para. 4.69]

So long as the Right to Property is recognised as a Fundamental Right, though in a more restricted form after the Constitution (Fourth Amendment) Act, 1955, the Committee would not be justified in recommending a law providing for inadequate compensation. In fact, the need for protecting the individual as against the State is all the greater because of the power of the State to adopt various devices which would altogether nullify, in effect, the provision about the payment of fair compensation to the owner deprived of his property as a result of compulsory acquisition.

[Para. 4.70]

8. Need for self imposed restrictions on the power of Acquisition.—According to the view now taken by the Supreme Court in the latest case of *R. C. Cooper and another v. Union of India*, the law authorising compulsory acquisition of property will have to satisfy the test of reasonable restriction as laid down in Art. 19(5) of the Constitution. While formulating its recommendations the Committee had

suggested certain restrictions in the matter of acquisition of land by the State. Although all these restrictions are not called for, for satisfying the requirements of the law viz., Art. 19(5), the Committee is of the view that the State should voluntarily impose upon itself certain restrictions in the interests of the people when the land is sought to be acquired for its needs, for democracy is basically a 'rule of law' which cannot be easily reconciled with an inequitable and arbitrary use of power. Corruption and abuse of authority are round the corner the moment the protection of his rights is not available to the citizen and 'law' is sought to be bypassed by short cuts.

[Para. 4.67]

The Committee has recommended certain reasonable restrictions in the matter of acquisition of land by the State. In this context, reference may be made here to a few of the recommendations of the Committee which are discussed at the proper places in detail. In the first place, the Committee has suggested provisions which would check excessive acquisition of land by the State. Secondly, further safeguards have been recommended for preventing non-utilisation or under-utilisation of the land for the purpose for which the same is acquired by Government for itself or for the companies. Thirdly, the Committee has recommended that the provisions of Part VII of the Land Acquisition Act which impose salutary restrictions in the matter of acquisition of land for companies should be complied with in all cases of acquisition of land for a company other than a Government Company/Corporation/Body Corporate and not merely 'ordinarily' as envisaged by the existing rules.

The Committee has tried to harmonise the needs of the state with the rights of the citizen in such a manner that on the one hand, the State projects should not be hampered and, on the other hand, the individual should not be injured unnecessarily and inequitably.

[Para. 4.72]

Principles for determining compensation—Main conclusions and recommendations

1. Market Value.—The compensation should be payable on all lands acquired only on the basis of market value as has been the guiding principle acceptable upto now.

[para 5.5]

There is no need for defining the term 'market value' which has come to mean the price which a willing vendor may reasonably expect to obtain from a willing purchaser.

[para 5.14]

2. Potential Value.—The potential value of the land should be a relevant consideration for determining the market value.

[para 5.38]

However, while assessing compensation, rise in land values on account of declaration of intention to acquire the land or specific State action to acquire land should not be taken into consideration.

[para 5.39]

3. Distinction between normal cases of acquisition and acquisition for big projects.—A distinction between the normal cases of acquisition where a small pocket of land is acquired for public purpose like setting up of a post office, construction of road or hospital etc. and acquisition of large tracts of land for big projects such as setting up of a new town, construction of a big dam etc. may be drawn.

[para 5.62]

4. Date of determining market value in normal cases of acquisition.—The market price of land may be determined with reference to the date of the publication of the notification under Section 4(1) of the Act in normal cases of acquisition.

[para 5.63]

5. Date of determination of market value for big projects.—However, where land is to be acquired for purposes of big projects including for the purpose of a new town or town planning, the market value prevailing at the date of the publication of the project notification should be the basis for determining compensation. A project for which it is proposed to acquire land covering an area of not less than 100 acres may be considered to be a 'big project' for this purpose.

While the fixation of the date of project notification as the material date will prevent speculative rise in prices of lands, it is not desirable to fix compensation rigidly on the basis of the market rate prevailing on the date of the publication of the project notification, as in a growing society some sort

of appreciation is inevitable. With a view to preventing undue profiteering and speculation, it is suggested that an additional allowance should be made for the normal rise in the land value during the period between the publication of the project notification and that of the section 4(1) notification subject to a maximum of 25 per cent of the land value on the date first mentioned.

[paras 5.72 and 5.73]

The special provisions with regard to the project acquisitions should not apply to any acquisition of land in a project area where notification under Section 4(1) in respect of the acquisition is not published within 2 years from the date of publication of the notification declaring the project. Such a restriction would be reasonable and in the interest of the general public.

[para 5.73]

6. Reinstatement Value.—When the land is used for some particular purpose such as for a public park, school, church, hospital, house of exceptional character business premises in which the business could only be carried on under special conditions or by means of special licence, it is very difficult to estimate its value for the purpose of assessing compensation for compulsory acquisition as there is no general demand or market for land for those purposes. One method adopted in U.K. is that known as 'equivalent reinstatement' by which is meant that the amount of compensation to be awarded is to be assessed according to the cost of acquiring an equally convenient site and erecting equally convenient premises in some other place where reinstatement is bonafide intended. This rule which was substantially enacted in Rule 5 of Section 2 of the U.K. Acquisition of Land Act, 1919 is re-enacted as Rule 5 of Section 5 of Land Compensation Act, 1961 now in force in the United Kingdom. The principle of reinstatement which has also been recognised by the Indian Courts should receive statutory recognition in our country.

[paras 5.77 to 5.80 & 5.86]

7. Solatium.—An adequate provision for the payment of solatium is a convenient means of providing for the cost of reinvestment and other incidental expenses which the owner might incur in connection with the acquisition of his land. The amount of solatium should be raised from 15% to 30%.

[para 5.97]

8. No set-off for betterment of adjoining land.—The landholder whose land is acquired should not be subjected to a claim of set off while awarding compensation in respect of the land acquired taking into account the other land which has not been acquired but which has been benefited by the

proposed scheme for acquisition. The clause sixthly of Section 24 which does not permit any set off may be retained in its present form. However, the appropriate Governments may consider the question of charging of "betterment levy" upon the lands which have been benefited by the project or development in cases where it is not already levied.

[para 5.107]

9. Compensation for necessary repairs made after the publication of the notification under S. 4(1).—The land-holder should be entitled to compensation if he makes necessary repairs for the maintenance of the building in emergent cases after communicating to Collector that he is doing so on account of emergent conditions. In other cases he should serve a notice on the Collector indicating that he intends undertaking necessary repairs for maintaining the building in a proper state of repairs. In case the Collector does not stop him from making such repairs within a period of 60 days from the date of the service of the notice, the permission of the Collector to such repairs may be assumed. The land holder/person interested would be entitled to compensation for repairs in such cases.

The provisions of Section 24 may be retained except clause seventhly with minor changes entitling the land holder to compensation for repairs in such cases.

[paras 5.114 & 5.124]

10. No compensation for Increase in value due to unlawful use of land.—The increase in the value of the land acquired by reason of the use thereof in a manner which could be restrained by, any court or is contrary to law or is detrimental to the health of the inmates of the premises or to public health

should not be taken into consideration in determining the market value of the land.

[para 5.122]

The clauses secondly to sixthly in Section 23(1) may be retained.

[para 5.123]

11. Compensation for Mines & Minerals.—With the abolition of Zamindaris and the vesting of mineral rights in the State Governments, the question of compensation for mines and minerals has practically ceased to be of any importance in our country. No recommendation in this regard is accordingly called for.

[para 5.140]

12. Compensation in kind—land for land.—The acquiring authority should, wherever it is practicable, make available land for land for the small holders so as not to disturb the subsistence equilibrium of the people affected by land acquisition. However, the option to get land for land is to be exercised only by the land owner or the person interested in land and not by the acquiring authority—Cash should not be substituted by alternate land unless the land owner agrees and that too in writing.

[para 5.143]

13. Interest on Compensation.—Having regard to the normal bank rate at which loans are available, the rate of interest should not be less than 6 per cent per annum. The existing provisions of the law fixing the rate at 6 per cent per annum should, therefore, be retained.

[para 5.153]

सत्यमेव जयते

Forum and procedure for determining compensation

1. Forum.—Broadly speaking, there are five agencies for determining compensation for the land acquired by the State. They are :—

- A. Tribunals.
- B. Arbitrators.
- C. Court and Assessors.
- D. Collector and the Court; and
- E. Courts.

[para 6.2]

Two out of the five agencies mentioned above were tried under the earlier Land Acquisition Acts in this country and have been found to be unsuitable. The Arbitrators were found to be incompetent and sometimes even corrupt. The system of Assessors for assisting the courts was also discontinued as competent Assessors were not easily procurable and there was an irresistible tendency for the Assessors to become not advisers but partisans. The system of Arbitrators or Assessors which has been tried and failed is not, therefore, commended. Nor would the system of land tribunal of U.K. be suitable for our country.

[para 6.53]

The executive agency such as that of the Collector cannot be regarded as the appropriate forum for determination of compensation for two reasons. In matters of compensation, complicated legal questions often arise and the Collector is generally not in a position to understand and appreciate the implications connected with the valuation of land. Secondly, it has been noticed that the approach of the Collector to the problem of compensation has generally been biased.

The determination of compensation should, therefore, be left only to the courts which alone are in a position to inspire confidence in the general public.

[paras 6.63 and 6.64]

2. Composition of Court.—With regard to the composition of the Court for determination of compensation, it should consist of a single person who is a functioning District Judge or a retired Judge of the High Court, or a Senior Subordinate Judge or more than 10 years' standing.

The Senior Subordinate Judge should exercise jurisdiction only on transfer of the case by the District Judge. The term 'District Judge' will include an Additional District Judge or a retired District or Additional District Judge.

[para 6.67]

In cases where acquisition of land is made for a big project or for town planning schemes affecting

a large section of the population, it may not be possible for the regular civil courts to decide the numerous cases that may be arising out of such acquisition proceedings. A special court consisting of a High Court Judge should, therefore, be set up for the disposal of cases arising out of acquisition for big projects.

[para 6.68]

3. Methods of determination of compensation.—The compensation may be fixed by an agreement between the parties and a reference may be made to Court if no agreement is reached. It is, however, not desirable for the Collector to negotiate in the matter of compensation, as such negotiations are likely to give rise to corrupt practices. All that the Collector should do is to make an offer on the basis of the material available with him and if that offer is accepted by the land-owner/person interested, the matter ends, but if he does not expressly accept that offer or he does not communicate his reaction to the offer, it should be deemed to be a refusal in which case the Collector should immediately thereafter refer the matter to a Court specially provided for dealing with the land acquisition cases.

[para 6.66]

4. Procedure for recording agreement/making reference to court.—As the scheme of settlement of the disputes as to area, compensation, etc. proposed by us is on the same lines as that of the Law Commission, we recommend that the procedure as prescribed in Section 12 of the draft Bill of the Commission should be followed by the Collector for recording the agreement of the parties as well as for reference of the matters for determination of the court. Briefly stated, under that provision, the Collector has to arrive at an agreement after consultation with the appropriate Government or the company or authority for which the acquisition is sought to be made and after calling for the requisite information from the claimants. The agreement is required to be signed by the parties and recorded by the Collector. In case of failure to arrive at an agreement, the matters in dispute are required to be referred to the Court.

[para 6.69]

In case where the parties, served with notices under Section 9 of the Act, do not appear before the Collector, it should be deemed to be a case where no agreement has been reached and the matter should be referred to the court and the amount of estimated compensation deposited in the court.

[para 6.70]

While making a reference to the Court, the provisions of Section 20 of the draft Bill of the Law

Commission which correspond to Section 19 of the present Act should be followed as they envisage submission of a detailed statement to the court.

[para 6.72]

5. Procedure to be followed by Court on receipt of reference.—On receipt of a reference from the Collector, it is necessary that the Court should give notice of the date of hearing not only to all the persons interested but also to the Collector and to the Central or the State Governments and the company or authority for whom acquisition is sought to be made. Section 51 of the draft Bill of the Law Commission provides for such notices and may be adopted in place of Section 20 of the Land Acquisition Act.

[para 6.73]

Section 22 of the Act provides that every such proceeding shall take place in the open court, and all persons entitled to practise in any Civil Court in the State shall be entitled to appear, plead and act in such proceedings. We recommend the adoption of this Section subject to the modification that any person who is not an advocate may also appear, plead and act in such proceedings. It is a matter of common knowledge that some persons are not in a position to engage practising lawyers. The interests of such persons should not be allowed to suffer for want of proper representation. Accordingly, in Land Acquisition proceedings either before the Collector or before the Court, the party should have the right of appearing not only in person or through an advocate but also through a representative of his choice though not an advocate.

[para 6.74]

6. Removal of restrictions on the amount of compensation to be awarded by Court.—Section 25(2) places certain restrictions on the amount of compensation to be awarded by the Court. There seems to be no justification for imposing restrictions of this kind, specially when the question will be decided by a competent judicial officer. The final decision as to what is the appropriate amount of compensation under the law should be left to the court. Accordingly, the provisions of Section 25(1) only may be retained with verbal changes so as to accord with the scheme recommended. The provisions contained in sub-section (2) and (3) of section 25 of the Act, may, however, be omitted.

[paras 6.76 and 6.77]

7. Form of Final Order.—With regard to the form of the final order of the court, the detailed provisions made in Section 58 of the draft Bill of the Law Commission relating to the form of the final order of the court should be adopted. A provision of this kind would enable the party to know exactly the value of the time separately.

[para 6.78]

8. Execution of final order.—Every final order of the court should be executable as if it were a

decree of the court as provided in Section 59 of the Bill of the Law Commission.

[para 6.79]

9. Apportionment of compensation.—With regard to the apportionment of compensation, the provisions of Section 54 as given in the Bill of the Law Commission should be adopted.

[para 6.80]

10. Procedure in other references under the Land Acquisition Act.—Section 57 of the draft Bill of the Law Commission which lays down the procedure for making a reference to the court on ancillary matters may be adopted.

[para 6.81]

11. Applicability of the Code of Civil Procedure.—The provisions of Section 53 of the Land Acquisition Act which makes the Code of Civil Procedure applicable to the proceedings before the Court should be retained.

[para 6.82]

12. Appeals in proceedings under the Land Acquisition Act.—The proper forum of appeal against the final order passed by any court under the Act should only be the High Court as provided under the Land Acquisition Act.

The right of appeal should be excluded in the following cases :

- (1) where the amount or value of the subject-matter in dispute in appeal does not exceed Rs 2,000.
- (2) where the order passed by the court relates to compensation for damage done in the course of a preliminary survey prior to the notification under Section 4(1), or of preliminary investigation under Section 4(2).
- (3) Where the order passed by the court relates to compensation for standing crops and trees or for any other damage for sudden dispossession in a case of immediate acquisition of land in an emergency.

[para 6.86]

However, the right of appeal should be available to the party when the case involves any point of law or any question of title to the land, irrespective of the amount or the value of the subject matter in dispute in appeal.

[para 6.87]

An appeal should also be allowed against the order passed by the Court on a reference under second proviso to Section 49(1) unless the amount or value of the subject matter in dispute in appeal does not exceed Rs. 2,000 and the case does not involve any question of law or title to the land.

[para 6.88]

As regards appeals to the Supreme Court, the provisions of Section 54 of the Land Acquisition Act need to be amended so as to be in conformity with the provisions of Article 133(1) of the Constitution. Apart from this aspect of the matter, there is no justification for restricting the right of appeal to the Supreme Court in the manner adopted in Section 54 of the Act.

13. Forum for determination of the existence of public purpose.—As the right to property is a Fundamental Right, and as the existence of public purpose is a condition precedent to the exercise of the power of acquisition under Article 31, it would be open to the person complaining of the violation of Article 31 to move the Supreme Court or the

High Court for appropriate relief under the provisions of Article 32 or Article 26. It is not desirable to entrust the jurisdiction, in the matter of determination of public purpose, to a court lower than that of a High Court because we feel that such a provision is likely to give rise to needless litigation of a long duration obstructing the completion of the acquisition proceedings.

The existence of public purpose should be made justiciable only in the Supreme Court, or the High Court in the exercise of its writ jurisdiction under Article 32 or Article 226, as the case may be, as it provides a cheaper and speedier remedy to a person for the enforcement of his Fundamental Rights

[para 6.94]



Procedural delays and remedies therefor

1. Committee's approach to the problem of delay.—In dealing with the causes of delays, the remedies should be based on a balanced approach for securing the following essential aims :

- (a) the complex process of land acquisition should be designed on the basis of effective pre-planning.
- (b) the legitimate interest of the persons interested should be given due protection.
- (c) the Government should be empowered to acquire land with reasonable speed for its projects of social welfare and economic development and for implementing measures required for dealing with emergencies and calamities.
- (d) a reasonable over-all time limit should be prescribed under the Act which should ensure that the land acquisition proceedings are finalised without undue delay.

The effectiveness of a land acquisition procedure would depend on the adequacy of pre-planning. To be effective, the pre-planning stage should—

- (a) ensure correct selection of land;
- (b) ensure that excessive land is not acquired and that good agricultural land or land which takes away occupation of the owners is acquired to the minimum extent possible;
- (c) prepare data required for proposals for rehabilitation where necessary;
- (d) exhaustively demarcate, measure and collect data in regard to the persons interested;
- (e) collect comprehensive data in regard to soil classification etc. and other information for determining compensation and for obtaining administrative approval for an estimate on a fairly firm basis.
- (f) and above all making a human approach to the question of determining compensation and not abusing one's power in one's own favour and forcing a deal on one's own terms.

To achieve the objects listed above, we feel that a distinction should be drawn between the normal cases of acquisition—cases for which only a small pocket of land is acquired for public purpose like setting up of post office, construction of road and hospital etc. and projects for which large tracts of land are acquired as, for example, setting up of a new town, the construction of a big dam, schemes of town planning and town improvement etc. The term big project may be defined to mean the project for which it is proposed to acquire land covering an area of not less than 100 acres.

2. Preliminary Survey of land etc. before issue of Section 4 notification.—A provision may be made in the Act for a preliminary survey of land before

the issue of notification under Section 4 for the purpose of enabling the Government to determine whether the land in any locality is needed or is likely to be needed for any public purpose.

The Collector should issue a notification for making a preliminary survey whereupon it would be lawful for an officer of the Government and his servant and workmen having written authority of the Collector to undertake survey and to carry other operations etc.

[para 7.33]

The provision in regard to the preliminary survey should normally be made use of in cases of acquisition for big projects but the applicability of this provision is not restricted to such cases of acquisition only. Such a provision would give sufficient time to the appropriate Government to make up its mind in regard to acquisition prior to the issue of the notification under Section 4(1) even in normal cases of acquisition.

[para 7.36]

3. Measurement of Land and preparation of plan thereof.—The provision of Section 8 are unnecessary and the measurement and making of a plan etc. should be done while carrying out survey etc. under section 4(2). The notification under Section 4(1) should be broadbased to include description of the land by its survey number, if any, and also by its boundaries and its approximate area.

A copy of the notification should be served on the owner, and where the owner is not the occupier also on the occupier of the land. The public notice of such notification should also be given in the case of Land situated in a village in the office of the village panchayat within whose jurisdiction the land lies.

The notification should also specify the date, (such date not being less than 21 days from the date of the notification), on or before which and the manner in which objections to the proposed acquisition can be made.

A provision may also be made in Section 4 that the land should be measured and a plan made and the names of persons interested also collected.

[para 7.37]

4. Disputes for damage arising out of preliminary survey/investigation.—All disputes as to the sufficiency of the amount of compensation in regard to the damage done to the land whether during the course of the preliminary survey prior to the issue of Section 4(1) notification or during the course of the preliminary investigation under Section 4(2) after the issue of the said notification should be settled by the court and not by the Collector.

[para 7.39]

5. Representation in enquiry before the Collector and Report of Collector.—The person interested should be allowed to be represented by a representative of his choice who need not necessarily be an advocate in the enquiry conducted by the Collector under Section 5A(2). A comprehensive report inclusive of all the data relating to the investigation, survey, measurements and plan which should be completed under Section 4(2) should be forwarded to the appropriate Government by the Collector for decision that the land is needed for a public purpose.

A copy of the report of the Collector should be supplied free of cost to the persons interested.

[para 7.40]

6. Representation to Government against report of Collector.—An opportunity to represent the case to the Government against the report of the Collector may be given to the objectors and the objector should be allowed to plead their case by a representative of their choice, who may not be an advocate.

[para 7.41]

7. Declaration of public purpose.—The declaration under Section 6 should *inter alia* specify the land with its precise boundaries and survey number, if any, its area and the place where the plan of the land could be inspected and the public purpose for which the land is needed in clear specific and unambiguous terms. In this context, the provisions contained in sub-sections (1), (3) and (6) of Section 8 of the Draft Bill of the Law Commission may be adopted except in so far as these lay down the time limits.

[para 7.42]

The issue of the number of declarations under Section 6 should not be restricted provided the overall time limit prescribed by the Committee is adhered to.

[para 7.43]

8. Notice to persons interested.—The provisions of Sections 10 and 11 of the draft Bill of the Law Commission relating to the issue of notices to persons interested by the Collector, should be adopted in so far as they accord with the scheme recommended by the Committee.

[para 7.44]

9. Power to take possession and payment of compensation.—It is not desirable to allow the Collector to take possession of the land without an offer of the estimated amount of compensation due to the persons interested. The procedure prescribed in Sections 10, 11 and 12 of the draft Bill of the Law Commission should be followed by the Collector before taking possession of the land.

[para 7.46]

Except in cases of emergency, the Collector should, within one month from the date of the agreement, tender payment of the amount of compensation

to the persons interested entitled thereto according to the agreement and should pay it to them.

In case where no agreement is arrived at between the Collector and the person interested, the estimated amount of compensation should be paid by the Collector to the persons interested entitled thereto.

In case where the agreed or the estimated amount of compensation tendered by the Collector is not accepted by the person interested entitled thereto the same shall be deposited in the court. If there is no person competent to alienate land or if there be any dispute relating to title to the compensation or to the apportionment of it, the Collector should deposit the estimated amount of compensation in the Court and give notice of such deposit to the persons interested entitled to the amount.

[para 7.47]

In cases where there is no agreement between the parties as to the amount of compensation the acceptance of the estimated amount of compensation should be without prejudice to the right of the party to claim the proper amount of compensation in the court.

The Collector should not take possession of any land without giving reasonable notice to the person interested in the land. Such a provision would enable them to remove their property from the land without unnecessary inconvenience.

[para 7.48]

10. Fixing time limits.—An overall time limit from the date of issue of notification under Section 4(1) up to the date of reference to the Court may be prescribed.

[para 7.49]

A period of 12 months from the date of issue of notification under Section 4(1) up to the date of reference to the court should be sufficient to complete the proceedings upto that stage in normal cases of acquisition. In some cases in which it may not be possible to complete the provisions within this period, it may be extended by another 3 months if there are good reasons to be recorded in writing.

In the case of acquisition of land for big projects, an overall period of 12 months should also be sufficient for completing proceedings from the issue of notification under Section 4(1) up to the date of reference to the Court. In cases where it is not possible to complete the said proceedings within this period it may be extended by another six months, if there are good reasons to be recorded in writing.

The time taken in litigation during the prescribed time limit should not be taken into account for computing the aforesaid time limits unless the Court, for sufficient reasons, rules it otherwise.

[para 7.50]

If within the time specified, the land acquisition proceedings are not completed up to the stage of the order of the Collector in terms of the agreement

or a reference to the Court (in case no such agreement is arrived at), the notification under Section 4(1) should stand cancelled and the persons interested in the land should be entitled to apply to the court for an order against the Collector for restoration of the possession in accordance with their respective interests and payment of such compensation as the court may determine in respect of the damage done.

The result of the cancellation of the notification under Section 4(1) will be that the Government will have to issue a fresh notification under Section 4(1), in which case the person interested will be entitled to compensation on the basis of market value as on the date of such fresh notification.

[para 7.51]

11. Suggestions for streamlining the process of acquisition.—The Revenue Department of the State Government which is concerned with the subject of land, its classification, settlement, land records (jamabandi, mutation register etc.) should be the appropriate department which can be entrusted with the task of formulation of policy in regard to land acquisition.

This Department can also provide coordination and initiative and exercise supervision and control. The Revenue Department is certainly in a position to have an objective approach to the problem of land acquisition particularly because acquisition is made by this Department mostly for other departments. The land acquisition cells should be set up at the Tehsil, District and State levels which should collect necessary data from the Revenue Department as well as from the offices of the Sub-Registrar.

The Cell at the State level should preferably be under the charge of a trained Valuation Officer.

The whole time staff should be appointed for land acquisition work for expediting the various stages involved in acquisition.

Suitable training courses may be designed for training the staff in regard to surveys, measurement, valuation of land etc., if considered necessary.

[para 7.53]

12. Setting up of Directorate of Land Acquisition.—A Directorate of Land Acquisition under the charge of the Member, Board of Revenue with high Secretariat status should be set up and he should be made responsible for the speedy completion of all land acquisition proceedings in the entire State.

A regular system of bi-monthly review at the State level and monthly reviews of progress and correction of necessary data at the level of Collector/Land Acquisition Officer should be introduced.

[para 7.54]

The suggestions in regard to setting up of Directorate of Land Acquisition are not intended to fetter the discretion of the State Governments in adopting other suitable measures, for streamlining the working of the Land Acquisition Act.

[para 7.55]

There should be effective pre-planning for minimising the delay. Pre-planning is mostly necessary in cases of acquisition of land for big projects. A project notification which should remain valid for a period of two years should be issued in order to enable State Governments to complete the preliminaries in the case of acquisition of land for big projects. With a view to protecting the rights of the persons interested in the land, it is suggested that in case the notification under Section 4(1) is not issued within a period of two years from the date of the project notification, the land covered by the project notification should be free from all the handicaps and restrictions imposed by acquisition proceedings.

[para 7.56]

Special powers in cases of urgency/emergency

Section 17 arms the Government with drastic powers. In acquisition proceedings all over the country, the Urgency clause has been the most abused section. It has become a rule for the acquiring authority to apply the urgency clause; and to dispense the provisions of Section 5-A which enables the owner or the occupier of the land proposed to be acquired to raise objections before the acquiring authority.

The courts are also not satisfied from their experience about the use of the urgency clause that the acquiring authority applies its mind in deciding whether or not the urgency clause should be made use of, and thus deprive the owners and persons interested in the land of a valuable opportunity to raise objections to the proposed acquisition.

[paras 8.12 and 8.14]

2. Though there would be a justification for taking possession of the land without an enquiry under Section 5-A, in an emergency, such a procedure should not be permitted in cases of emergencies not specified in the Act.

[para 8.18]

3. The Law Commission had recommended the use of the Special Powers in cases of specified emergencies only. Under the scheme of the Commission, the restriction under Section 17 confining the power to take immediate possession to waste and arable lands has been removed. In Section 32 of their Bill, the Commission has specifically included emergencies of the nature contemplated in sub section 2 of Section 17, such as the repairing of the breaches in the means of communication. The Commission has added a new sub-section to the effect that the Collector should on taking possession, immediately report the same to the appropriate Government together with the reasons therefor. Thereupon, the appropriate Government has to decide within three months of the receipt of the report whether procedure for acquisition of land should be commenced or not. If the Government fails to decide within four months of the date of taking possession, the persons interested in the land are entitled to restoration of possession of the land together with compensation.

The draft Bill of the Commission also provides for the payment of interim compensation in such

cases of acquisition to the extent of about 60% of the amount which the person concerned would, in the opinion of the Collector, be entitled to claim in respect of the land. Where payment is to be made for damage sustained by sudden dispossession, the dispute as to the sufficiency of the amount is to be referred by the Collector to the Court. Sub-Section 4 of Section 17 has been omitted by the Law Commission because under the scheme of the Commission, possession can be taken by the Government even before the issue of a notification under Section 4.

[paras 8.20, 8.21 and 8.22]

4. Subject to the following modifications, the recommendations of the Law Commission as embodied in Sections 32 to 34 of their draft Bill should be adopted.

- (1) That an opportunity should be provided to the dispossessed land-owner to appeal to the Government against the decision of the Collector in the first instance when he takes possession of his land on all grounds available to him;
- (2) That the interim compensation which was suggested by the Law Commission as 60% of the value estimated by the Collector should be raised to 90% and this should be given to the land-owner;
- (3) That the land-owner should be provided an opportunity to take his grievances to a court of law if he is dissatisfied by the order of the Collector upheld by the Government.

[para 8.23]

5. The provision of Section 17 should be made applicable only to the cases of emergencies specified in Section 32 of the draft Bill of the Law Commission.

[para 8.24]

6. Section 31 of the draft Bill of the Law Commission provides that apart from emergency, the Collector may after issue of notification under Section 4(1), take possession of the land if the persons interested in the land express in writing their willingness to surrender possession of the land by waiving their right to object to the acquisition. This provision is likely to create intricate and complex problems and should not, therefore, be adopted.

[para 8.25]

Extent of Government Responsibility for Rehabilitation of evicted families and Recommendations about Discharge of his responsibility

1. Extent of rehabilitation compensation—Position under the existing law.—Under the Land Acquisition Act, 1894, no compensation is payable to the persons who are not interested in the land on the ground that their earnings have been effected by the change of ownership or indeed on any ground. However, if the acquisition injuriously affects the earnings of the person interested, he is entitled to claim further compensation beyond the market value of the land.

The law in the United Kingdom as well as the law as contained in Clauses *fourthly* and *fifthly* of section 23(1) of our Land Acquisition Act, 1894, does provide for payment of compensation attributable to the disturbance involving a change of residence or place of business in consequence of the acquisition of the land. However, this compensation is payable only to the persons interested in the land such as the owners, the tenants and mortgagees in possession etc.

[paras 9.2 & 9.30]

The increase in the amount of solatium would go a long way in meeting the cost of rehabilitation in the case of the land owners and other persons interested in the land and entitled to compensation under the provisions of the Act.

[para 9.34]

2. Rehabilitation of displaced families who do not fall in the category of 'persons interested'.—The problem of persons displaced as a consequence of acquisition of vast areas of land for various development projects undertaken by the State after Independence has assumed great importance. Such persons have no right to compensation under the existing law. While it may not be possible to provide in the body of the Statute for measures of rehabilitation of such uprooted families. Government should accept a social and moral responsibility for the rehabilitation of persons who indirectly suffer damage as a result of acquisition i.e. labourers, artisans and similar other classes of persons who lose their occupations due to the wholesale shifting of inhabitants when large areas are acquired. The State should assume responsibility in the case of such labourers and artisans whose occupation is gone and who are compelled to shift and start afresh the struggle for life as they have been doing under their normal programmes forgiving doles to the aged, the infirm and destitutes. Of course, assistance should be given primarily to the poor and deserving persons who have lost their means of livelihood as a result of the uprooting that is involved in acquisition for big projects.

[para 9.38]

3. Resettlement of displaced persons.—The measures for rehabilitation of displaced persons fall broadly into two categories—(i) resettlement of displaced persons and (ii) economic rehabilitation. Unless the State Governments set up resettlement colonies with essential community facilities, it is not possible for displaced families who do not own land but are part of the social and economic fabric of the village community to resettle themselves. Though it is not practicable to lay down any hard and fast rule on the subject, the State Governments concerned should undertake responsibility for rehabilitation of uprooted families as their social and moral responsibility. They may allot land to displaced families for the purpose of their resettlement either on lease or on a hire-purchase basis. The cost may be recovered by easy instalments with nominal interest. The displaced cultivators may, as far as possible, be allotted surplus culturable land with irrigation facilities. They may be granted tac-cavi loans for the purchase of seeds, agricultural implements, fertilisers etc. If the number of displaced families is considerable, new colonies may be set up with necessary amenities such as internal roads, cross drainage works, drinking water, community hall, schools, places of worship, burial grounds etc.

[para 9.41]

4. Economic Rehabilitation.—On account of shortage of land in certain projects areas it may not be possible to provide land to the landholders equal in area to the land acquired by the acquiring authority. In some cases it may not even be possible to provide any cultivable land to the displaced persons or tillers who depend mainly on cultivation. Even in cases where some land has been provided in lieu of the land acquired, the displaced persons may have to be absorbed in certain other vocations or employed on the project, subject to their suitability, to meet their immediate necessities and livelihood.

[para 9.42]

5. Preferential treatment to displaced persons in the matter of employment.—One of the measures which can be adopted for rehabilitation is that the persons displaced as a result of acquisition of land for a big project may be given preference in employment to the posts arising in the industries for the establishment of which the acquisition is sought to be made. The question of giving preferential treatment in employment has assumed great importance after Independence owing to a large-scale acquisition of land required for massive scheme of development. The problem posed by the scheme that the 'sons of soil' or *mulkais* are entitled to preferential, if not exclusive appointments in industrial establishments started in the respective regions has been considered by the National Commission on

Labour in its Report of 1969. The Commission expressed the view that on principle, it is difficult to reconcile this concept with the claim that if an industry is established in a region, it is the inhabitants of that region who are entitled exclusively or at least preferentially to employment in that establishment. The Commission also thought that such a claim, if accepted, would hamper mobility in economic life altogether and create walls of exclusiveness between different regions. However, having regard to the hard facts and realities of life, the Commission has made certain recommendations which they thought can be reasonably and fairly worked out within limits which will not contravene the basic concept of one citizenship and the Fundamental Rights guaranteed to all the citizens. The Commission pointed out that the main elements in the claims on behalf of the 'sons of the soil' have long been recognised by the Government of India when it laid-down certain principles in the matter of recruitment to its public undertakings. The Commission thought that the Directive if implemented in the spirit in which it has been drawn up will provide adequate scope to local persons. Since dissatisfaction still persists in spite of the directive, the Commission recommended that the following steps to supervise its implementation should be taken to remove unjustified apprehension among the local candidates :—

- (i) While recruiting unskilled employees, first preference should be given to persons displaced from the areas acquired for the project and next preference should be given to those who have been living within the same vicinity.
- (ii) The selection of persons to posts in lower scales should not be left entirely to the head of a public sector enterprise. It should constitute a Recruitment Committee with a nominee of the Government of the State within which the unit is located as a member of the Committee.
- (iii) In the case of middle level technicians, where the recruitment has to be on the all-India basis, a member of the State Service Commission should be associated in making selections in addition to the State Government official on the Board of Directors.
- (iv) Apart from the report sent to the concerned Ministry at the Centre, the undertaking should

send a statement at regular intervals, preferably every quarter, to the State Government about the latest employment and recruitment position.

According to the Commission, the steps recommended above should also be made applicable equally to recruitment in the private sector.

The Committee endorses the above recommendations of the National Labour Commission for adoption in connection with rehabilitation of persons displaced as a result of large-scale acquisition of land for projects.

[paras 9.48, 9.54, 9.55 & 9.56]

6. Other measures for rehabilitation of displaced persons.—The measures like opening of training centres for imparting semi-technical training, advancing of short term loans with nominal or no interest and in deserving cases sanction of grants and giving preferential treatment in the matter of employment to lower scale posts should go a long way to ensure economic rehabilitation of displaced persons.

[para 9.58]

7. Financial resources for rehabilitation.—The part of the cost towards rehabilitation should be met from the funds collected as a result of levying of betterment fees.

[para 9.62]

The rehabilitation cost should also form a part of the cost of the project which in many cases are developmental projects and are likely to give returns many times more than the cost incurred in setting them up.

[para 9.62]

In case the project is not a productive one and it is not feasible to levy a betterment fee, or if the fund raised therefrom are not adequate to meet the costs of rehabilitation, the necessary funds should be found from the general revenues. These schemes may also form part of such social welfare programmes of the State Governments.

[para 9.62]

Betterment Levy

1. The concept of levying betterment fee is not new to this country. Most of the State Governments have already levied betterment fee on lands whose value has appreciated as a result of irrigation facilities provided by the projects undertaken in the Five Year Plans. Some of the Town Planning and Town Improvement Acts have also included provisions for the levy of betterment fee in the case of urban lands although some of these Acts follow the principles laid down in the Land Acquisition Act for the payment of compensation for acquisition of the land for town improvement or town planning.

The State Governments may levy betterment fee on the lands which have been benefited as a result of the implementation of the projects or development schemes initiated by the Government.

The fees may be levied on such of the lands as are not covered by the existing laws levying such fees e.g., levy on irrigated lands or the lands covered under various Town Planning or Town Improvement Acts etc.

The amount of betterment levy should be utilised primarily for the rehabilitation of uprooted land-holders.

[para 10.27]

The State Governments, while examining the question of levying betterment fee in respect of lands covered by big projects, should draw a distinction between the landowner whose land is acquired in part for the execution of the project and the owner who has not lost an inch of his land but has benefited as a result of increase in value of his land on account of the execution of the scheme. The land owner whose land is acquired in part for the execution of the project stands on a different footing vis-a-vis the owner who has not lost any land

in the execution of the scheme but is none-the-less benefited as a result of the scheme. The former would receive compensation only on the basis of market value which existed two years anterior to the date of publication of such notification together with an allowance for the normal rise in the prices of land subject to a maximum of 25% under the scheme recommended by us. If there were a rise in the prices of lands (and the present trend seems to be in that direction) between the date of the declaration of the project and the date of Section 4(1) notification, the person whose land is partly acquired for the project may be deprived of compensation which would have been payable to him on the basis of market-value as on the date of publication of notification under Section 4(1), if the same land were acquired for public purposes other than the execution of a big project. This would create invidious distinction between the advantage gained by a landowner whose land has not been acquired at all and the loss suffered by a land-owner whose land has been partly acquired. The States should try to operate the laws in as equitable a manner as possible and we think that the rate of betterment levy should be lower in the case of such land owners whose land has been partly acquired vis-a-vis the persons whose land is not acquired at all but has been equally benefited by the scheme.

[para 10.28]

Imposition of a betterment levy appears entirely to be within the ambit of Entry 49 of the State list of the VII Schedule of our Constitution and within the competence of the State Legislature. In view of this position of the law, it will not be feasible to have Parliamentary legislation prescribing uniformity in the rate of betterment levy and ancillary matters, such as procedure for assessment, determination and recovery thereof. The matter, must, therefore, be left to the States.

[paras 10.33 and 10.34]

Feasibility of enacting a Uniform Law on Land Acquisition

1. **Extent of the applicability of the Act.**—The law of Land Acquisition should be made applicable to the whole of India including the States of Jammu and Kashmir and Nagaland after complying with the necessary constitutional formalities in respect of these two States, as there are all reasons in favour of this proposition and none against it.

[para 11.13]

2. **Need for enforcing a uniform law on land acquisition.**—The view of the Law Commission that the rights and liabilities of citizens of one State should not materially differ from those of another in the matter of acquisition of land is endorsed. The taking of land causes the same hardship to the owner and the object for which it is required can have no bearing in determining its value. The existence of public purpose is a condition precedent in all types of acquisition of land and as such the compensation payable for acquisition of any kind should, as far as possible, be on a uniform basis.

The principles of compensation and the time limits for completion of the acquisition proceedings suggested by the Committee should be made applicable to all cases of acquisition of land irrespective of the object for which the acquisition is sought to be made, whether such object relates to a matter falling within the Union List or the State List.

A single and simple piece of legislation relating to acquisition of land would go a long way in avoiding confusion in the mind of the public with regard to the rights possessed by them in this regard, and will also remove a temptation before the acquiring authority of preferring to adopt the procedure which is more favourable to their designs but far more injurious to the interests of the land holder.

[para 11.16]

3. **Applicability of uniform law on acquisition to slum clearance schemes.**—Even when land is sought to be acquired for clearance of slums, the persons interested in land should get a better deal than under the existing laws in force in the various States and certain Union Territories. The basic principle governing the compensation to be paid for slum property is that the acquiring authority should not where the property is unfit for human habitation and dangerous to the health of the inhabitants of the area, pay for any value which is not rightly due to the owner. It is for this reason that the Committee has recommended the adoption of Rule 4 of Section 5 of the U.K. Land Compensation Act, 1961, which provides that, in assessing compensation, no account should be taken of any increase in the value of the land due to its use in a manner which is detrimental to the health of the occupants

or to the public health. Reading this rule together with the rule of awarding compensation on the basis of market-value as on the date of notification under Section 4(1), the Courts would not award an amount of compensation greater than the one which would be justly due to the slum owner. Government is not, therefore likely to suffer much by applying the uniform principles of compensation, recommended by the Committee, even to the acquisition of slum property.

[para 11.19]

4. **Control by President for ensuring uniformity.**—Any Act passed by the State Legislature on a matter within the State field will have to comply *inter alia* with clauses 2 and 3 of Article 31 if the law contains provisions for expropriation of property. There may not be much difficulty in the State Law satisfying the requirements of the provisions of Article 31(2) if the compensation provided by the Law is not illusory and the same is based on principles which are not irrelevant, but effective control can be exercised by the President under Article 31(3) of the Constitution for ensuring uniformity. Article 31(3) provides that no law as is referred in clause (2) of Article 31, made by the Legislature of a State shall have effect unless such a law having been reserved for the consideration of the President has received his assent. The provisions relating to acquisition of land contained in the Central as well as the States Acts should follow a uniform pattern with regard to certain essential matters such as principles of compensation and time limits for completion of the acquisition proceedings, irrespective of the object of acquisition to be served by the acquisition, whether such object relates to a matter falling within the Union List or the State List. The principles of compensation and time-limits should not be different from those recommended simply because the objects of acquisition happens to be town planning/improvements, development of industries, slum clearance or execution of projects and housing schemes etc.

[para 11.28]

5. As the President exercises his authority with the advice of the Union Ministry, it would be open to the Ministry concerned to recommend to the President to withhold his assent to the State law providing for acquisition if that law differs in material respects, i.e. principles of compensation and time-limits for completion of acquisition proceedings from the parliamentary legislation in conformity with our recommendations.

[para 11.29]

6. **Whether Parliament can legislate on land acquisition for objects specified in the State List.**—Parliament is competent to pass a law for compulsory acquisition of land even in cases where the acquisition is sought to be made for State purposes

such as town planning/improvement, development of industries, public health and sanitation, slum clearance etc., which are matters covered by the State List. The mere fact that the objects of acquisition are covered by the matters enumerated in the State List would not detract from the fact that the legislation is, in pith and substance, relating to acquisition of property under Entry 42 of the Concurrent List.

7. Procedure for ensuring Uniformity of Law in the matter of acquisition of land.—While the States may have their own laws relating to town planning, public health, etc. for regulating matters other than land acquisition, there is no reason why acquisition for such purposes should not be governed in regard to essential matters such as compensation and time limits by Parliamentary legislation on the subject.

Parliamentary legislation in so far as it relates to the principles of compensation and the time limits for the completion of acquisition proceedings, in accordance with the recommendations of the Committee, will override the repugnant provisions in the

existing law on the subject because under Article 254(2) of the Constitution, Parliament can always override or repeal State Law to the contrary in the concurrent field. A law which might thereafter be passed by a State in derogation of the law passed by Parliament, will have to be reserved for the assent of the President and would not become law unless the same is given in accordance with Article 31(3).

When the matter comes for the assent of the President, it would be open to the concerned Administrative Ministry of the Union to advise the President to refuse his assent to any law of the State purporting to override the law enacted by Parliament particularly when the State Law adopts principles of compensation etc. which are materially different from those contained in the Law enacted by Parliament. The assent of the President will thus depend on the policy of the Union Executive. This policy should be governed by the necessity of ensuring uniformity of law of compulsory acquisition of land throughout the country, irrespective of the objects to be served by the acquisition.

[para 11.30]



Recommendations on other matters for improvement in the Land Acquisition Act

1. Setting up of Land Acquisition Committee.—The Land Acquisition Committee constituted under the Land Acquisition (Companies) Rules, 1963, plays an important role in advising the Government against excessive acquisition of land and taking of good agricultural land for companies. The advice of the Committee is intended to act as a valuable safeguard not only against excessive acquisition, but also against acquisition of good agricultural land for companies. However, there is no provision either in the Act or the Rules made thereunder for preventing excessive acquisition of land or acquisition of good agricultural land when the acquisition is sought to be made by the State for a public purpose, and not for a company.

[para 12.2]

It is found that land is acquired merely as a reserve fund not only for the expansion of the project in hand but also for projects which were not yet even conceived so that extensive land without paying the market price of the day should be available to the State and thus the landowner is denied a fair deal. It is a device by which the price of the land is frozen without making any payment so that the landholder should not get the advantage of even the natural rise of price. It is, therefore, necessary to provide for a device which will prevent at the initial stage any intention to acquire land far in excess of the reasonable requirements of the acquiring authority.

[para 12.3]

It would not be practicable to impose a total ban on the acquisition of good agricultural land. Acquisition of good agricultural land might become necessary in certain cases because it is located at a strategic place and is needed for the defence of the country and also for the development of agriculture itself as for irrigation projects, canals, agricultural institutions, seed-farms, and roads for the transport of the agricultural products. However, there can be no two opinions on the question that good agricultural land should not be acquired unless it is absolutely necessary. It is thus necessary to provide for a statutory device for preventing the acquisition of good agricultural land and acquisition of excessive land, agricultural or non-agricultural.

[paras 12.6 and 12.7]

A Land Acquisition Committee should therefore be set up under the Act for advising the Government in respect of the Land Use Policy in the matter of large-scale acquisitions for any public purpose

including the implementation of projects. The functions of the Committee would be to ensure that :—

- (i) the land which is already in the possession of the acquiring body is put to optimum use before permitting the proposed acquisition.
- (ii) an excessive acquisition does not take place;
- (iii) the acquisition of good agricultural land does not take place where it can be avoided; and
- (iv) the proposed acquisition is justified on the basis of high density norms.

The Committee should tender advice to the Government before issue of the notification under Section 4(1) of the Land Acquisition Act.

The composition of the Committee should be left to the appropriate Government, but its members should include both experts on the subject and representatives of the people.

[para 12.9]

2. Definition of expression 'Person Interested'.—The definition of the expression 'Person Interested' should be adopted with verbal changes suggested by the Law Commission, and further amended suitably so as to include also owners, occupiers and persons whose names are registered in the revenue record for making it more explicit for the purpose of clarity.

[para 12.12]

3. Local Authority.—A local authority should include the town planning and town improvement authorities so that acquisition of land should be made for these authorities as well only under the Land Acquisition Act.

[para 12.13]

4. Power to summon and enforce attendance of witnesses and production of documents etc.—Section 64 in the draft Bill of the Law Commission relating to powers of Collector to summon and enforce attendance of witnesses to examine them on oath or commission may be adopted, as the same is more elaborate than Section 14 of the Act.

[para 12.14]

5. Surrender of possession.—Section 47 of the Land Acquisition Act relating to enforcement of surrender of possession may be adopted subject to the modification that the Collector shall be entitled to enforce the surrender of the possession of the land only after he has paid or deposited the whole estimated amount of compensation in court or 90% of the amount when acquisition is made in an emergency.

[para 12.15]

6. Withdrawal of acquisition proceeding.—The provisions of Section 48 relating to withdrawal from acquisition of land should be retained with an addition that in case of dispute as to the amount of compensation under sub-section (2) of Section 48, the Collector shall refer the same to the court for decision.

[para 12.17]

7. Acquisition of part of house, building etc.—The provisions of Section 49(1) of the Act relating to acquisition of part of house or building may be adopted subject to the provision that the owner of the land will have option to withdraw or modify his expressed desire that the whole of such house etc. should be acquired within 30 days from the date of service of notice upon him of the intended acquisition in respect of which notice under Section 4(1) has already been issued.

[para 12.20]

The provisions of Section 49 should also be made applicable to land as well in certain cases, and a new provision should be incorporated in the Act providing that in cases where only a part of the land is acquired and the land-owner desires that the whole of his land should be taken on the ground that the retention of the remaining part has become uneconomical for him, the Collector may either acquire the whole of the land or in case where he is satisfied that the plea of the landlord is not tenable shall refer the matter to the court for determination whether or not the retention of the remaining part has become uneconomical for the owner. In such an event, the Collector can take possession of the part of the land in respect of which a notification under Section 4 has been issued after complying with all the relevant provisions of the Land Acquisition Act.

[para 12.21]

8. Section 51 : Exemption from Stamp Duty and Fees.—Section 51 of the Act relating to exemption from stamp duty and fees may be retained subject

to verbal changes as suggested in Section 69 of the draft Bill of the Law Commission.

[para 12.22]

9. Protection of compensation from seizure or attachment.—Section 70 of the draft Bill of the Law Commission which protects compensation from seizure or attachment where such compensation is awarded in respect of acquisition of land which is not liable for attachment or sale in execution of a decree or order of any Civil Court, may be adopted.

[para 12.23]

10. Proof by Certified Copies.—Section 71 of the draft Bill of the Law Commission, which provides that in any proceeding under the Land Acquisition Act, a certified copy of the registered document may be accepted as evidence of the transaction recorded in the document without the necessity of production or proof of the original, should be adopted.

[para 12.23]

11. Penalty for destroying trenches etc.—Sections 77 and 78 of the draft Bill of the Law Commission which provides for penalty for destroying trenches etc. should be adopted subject to the modification that the term of imprisonment and the amount of fine should not exceed 3 months and Rs. 250 respectively.

[para 12.25]

12. Cognizance of Offences.—Section 79 of the draft Bill of the Law Commission, which provides that no court shall take cognizance of an offence under Sections 77 and 78 except on a report in writing by an officer authorised in this behalf by the appropriate Government, may be adopted.

[para 12.26]

13. Power to make Rules.—In order to ensure uniformity, the power to make the rules under Section 55 of the Act should be vested only in the Central Government.

[para 12.27]

APPENDICES



APPENDIX 1

Government of India Resolution setting up the Committee to examine the framework of the Land Acquisition Act, 1894

No. 6-6/67-Genl. II

GOVERNMENT OF INDIA

MINISTRY OF FOOD, AGRICULTURE, COMMUNITY DEVELOPMENT AND COOPERATION

(Department of Agriculture)

New Delhi, dated the 27th July, 1967.

RESOLUTION

In the context of a rapidly developing economy a review of the working of the Land Acquisition Act, 1894 has become necessary. With a view to examining the entire frame-work of the Land Acquisition Act, 1894 the Government of India in the Ministry of Food, Agriculture, Community Development and Cooperation (Department of Agriculture) have decided to set up a Committee consisting of members of Parliament and representatives of State Governments.

2. The Composition of the Committee will be as follows :—

(A list of members is given at the outset of the Report).

3. **The term of reference.**—The Committee will examine the scheme of acquisition of land for public purpose and companies in the public and private sectors under the Land Acquisition Act, 1894, with particular reference to :

- (i) principles which should govern acquisition of land for a public purpose ;
- (ii) principles for determining compensation ;
- (iii) reasons for administrative delays and remedial measures ;
- (iv) extent of Government responsibility for rehabilitation of evicted families and recommendation about discharge of this responsibility;

(v) feasibility of enacting a uniform Central law on 'land acquisition' which may be applicable to the whole country although 'land acquisition' is in the Concurrent List.

4. The membership of the Committee will be honorary, but non-official members will be entitled to travelling and daily allowance in accordance with the orders contained in the Ministry of Finance's Office Memorandum No. 6/26/E.IV/59 dated the 5th September, 1960, as amended from time to time. Government officials who are members will be governed in the matter of T. A. and D. A. by the rules normally applicable to them.

5. The Committee will meet as often as considered necessary. The headquarters of the Committee will be at New Delhi but it may visit such other places as it deems fit for gathering evidence on the field and hold its meetings at such other places as it considers necessary.

6. The Committee will evolve its own procedure of work.

7. The Committee will submit its report to the Government as early as possible, but not later than 31st March, 1968.*

Sd/- B. SIVARAMAN,
Secretary to the Government of India.

*The time for submission of the Report was extended by Government upto 31-1-1970.

APPENDIX 2

Speech of Shri Antasahab P. Shinde, Minister of State in the Ministry of Food, Agriculture, Community Development and Cooperation at the inaugural session of the Land Acquisition Review Committee, in New Delhi on 14th August 1967.

SHRI MULLA AND FRIENDS

Your Committee has been entrusted with a task of far-reaching importance. While it is true that the Land Acquisition Act, 1894 has, by and large, stood the test of time during the British Rule, the situation has undergone a radical change after the attainment of Independence. A number of river valley projects were taken up in many States. Steel plants and other public sector industries have had to be located at sites considered most suitable. Expansion of Railways has been equally phenomenal. For all these projects, land is the primary raw material. On the other hand, large scale acquisition not only takes a heavy toll of the area under agriculture, but also uproots people from their homes and hearths. These are problems which have caused concern in the Parliament, in the Ministry and in the State Legislatures.

2. In a developing country like ours, engaged in programmes of economic development and social change, acquisition of land for public purposes is unavoidable. What is necessary is to aim at a balanced development whether it is the requirements of industry, communications, urban development or the extension of irrigation for agricultural development.

3. In this respect, the provisions of the 1894 Act have a number of limitations. Several judicial pronouncements have been made in regard to the interpretation and construction of the land acquisition law. Administrative delays have often slowed down the pace of development. Government at times finds it difficult to acquire land speedily for many a public purpose.

4. On the other hand, the affected persons face distress due to displacement and delay in the payment of

compensation. Also the adequacy of compensation has been called in question on more occasions than I would care to count.

5. In selecting the sites for a project, we have always timously emphasized that good agricultural lands should not be acquired as far as possible. From these directions have been observed in the various parts of the country. I am sure, be looked into by the Committee.

6. You are all aware of the background in which the Committee has been set up. During the consideration of the Land Acquisition (Amendment & Validation) Act 1967, in both Houses, several Members were critical of the administration of the Land Acquisition Act. The main issues on which attention was focussed were the acquisition of productive land, inadequacy of compensation, unconscionable delays, and rehabilitation of persons displaced as a result of acquisition of land. Government gave an assurance on the floor of both the Houses of Parliament that a Committee will be appointed soon to go into the entire provisions of the Land Acquisition Act, 1894. I am glad that the assurance now stands fulfilled.

7. However, this is only the beginning. The terms of reference entrusted to you are wide enough to cover all aspects of the problems facing the Government as well as the people. I hope the Committee will evolve a satisfactory procedure of work and will be able to gather opinions as extensively as possible.

8. I am glad that Shri Mulla and other Members of the Committee have found time to accept this difficult and complicated assignment in spite of your multifarious preoccupations. I assure you that Government will give its fullest consideration to the suggestions and recommendations which the Committee may make in due course.



Inaugural Address by the Chairman Shri A. N. Mulla, at the Inaugural Session of the Land Acquisition Review Committee, in New Delhi on 14th August, 1967

SHRI SHINDE AND MEMBERS OF THIS COMMITTEE,

I thank Shri Shinde on your behalf and on my own behalf for giving us this opportunity of coming together for applying ourselves to a task which is of paramount importance. He has already referred to the various aspects of the problem which we will have to face and today we have collected here in order to come to know each other so that a preliminary talk may be had, about the plan of action. We will circulate a draft Questionnaire to which we will apply our minds and lay down the basic principles and finalise an agreed procedure which we may have to follow and then later on we will follow it up.

2. To me it seems that any problem which we tackle today is bound to involve some conflicting interests. Life as you live it today is full of conflicts and self-interests and you can never avoid these conflicts and interests. Our main task is to consider these conflicting interests to lay down priorities according to which we should decide which interest should be given top priority and which interest may be ignored. At the moment we will have to look to the interests of the people whom you represent and also to persons whose lands are acquired and also to the interests of the State for whom land is acquired. The State represents the cumulative interests of the people. We have to make a sympathetic and kind approach towards those

who are affected by this law. This law was enacted in 1894 and we have travelled very far from that time. With this stupendous task before the Committee, we have to uphold certain vital principles and by clinging to these principles alone, we will be able to reach that kind of decision which will be acceptable to all. I depend upon the experience of all of you gentlemen; you are seasoned members of Parliament and (as compared to you), I am completely ignorant for I do not know what is in the minds of the people. You have your hand on the pulse of the people and I will be guided by you as to what should be the proper guidelines for determining compensation which would satisfy the people? In this type of legislation it is necessary that the authority to which the task of acquiring land is entrusted, implements the law in letter and spirit. We should not make discrimination. For the task of acquiring land for public purposes, we will have to formulate certain principles. We will have to see how far we will make provisions in the Law itself. We should make our recommendations in a manner which should make the operation of law more consistent with public good and also the rights of the citizen. It should not be arbitrarily exercised and we will make provisions to see that the scope and authority are well regulated. I hope your cumulative wisdom will help me in giving something to the State which is badly needed and, with your joint efforts, we might achieve some success in this stupendous task.



APPENDIX 4

Circular Letter dated 9th October, 1967 issued to State Governments/Organisations/Persons Interested etc. Soliciting replies to the questionnaire

GOVERNMENT OF INDIA

MINISTRY OF FOOD, AGRICULTURE, COMMUNITY DEVELOPMENT AND COOPERATION
(Department of Agriculture)

COMMITTEE FOR EXAMINING THE FRAME-WORK OF THE LAND ACQUISITION ACT, 1894

New Delhi, dated the 9th October, 1967.

17th Asvina, 1889.

FROM

Shri D. B. Kulkarni,

Joint Secretary to the Government of India,
and Member Secretary of the Committee.

SUBJECT:—*Examination of the framework of the Land Acquisition Act, 1894—Questionnaire.*

SIR,

I am directed to say that a high power committee consisting of Members of Parliament and representatives of State Governments has been appointed to review the entire working of the Land Acquisition Act, 1894 and suggest improvements in its administration which have become necessary on account of the developing economy of the country. This Committee started functioning pursuant to the Ministry of Food, Agriculture, Community Development and Coop. Resolution No. 6-6/67-Genl. II, dated the 27th July, 1967. It has been functioning under the Chairmanship of Shri Anand Narain Mulla, a Member of Parliament and retired Judge of Allahabad High Court. According to the terms of reference, this Committee has to examine the scheme of acquisition of land for public purposes and for companies in the public and private sectors under the Land Acquisition Act, 1894 with particular reference to:—

- (i) principles which should govern acquisition of land for a public purpose;
- (ii) principles for determining compensation;
- (iii) reasons for administrative delays and remedial measures;

(iv) extent of Government responsibility for rehabilitation of evicted families and recommendations about discharge of this responsibility; and

(v) feasibility of enacting a uniform law on 'land acquisition' which may be applicable to the whole country although 'land acquisition' is in the Concurrent List.

2. At its meetings held on the 14th and 15th September, 1967, the Committee decided to issue a questionnaire for country-wide circulation asking for comments and suggestions of all State Governments, public Organisations and individuals interested in the matter. A copy of the questionnaire together with the annexures mentioned therein is sent herewith.

3. The Committee would like to complete its work and submit its report to the Government of India as early as possible and not later than 31st March, 1968. You are, therefore, requested to send your replies to the questionnaire to the undersigned at the above-mentioned address as early as possible and not later than 15th November, 1967.

4. I am to add that Organisations/persons are free to communicate to the Committee their views on matters which have a bearing on the terms of reference though not specifically covered in the accompanying questionnaire.

5. It will be highly appreciated if the contents of the questionnaire are brought to the notice of all the interested persons, organisations etc.

Yours faithfully,

(Sd.) D. B. KULKARNI,

Joint Secretary to the Govt. of India
& Member Secretary of the Committee.

APPENDIX 5
QUESTIONNAIRE
GOVERNMENT OF INDIA
MINISTRY OF FOOD, AGRICULTURE COMMUNITY DEVELOPMENT AND
COOPERATION
(Department of Agriculture)

Committee for Examining the Framework of the Land Acquisition Act, 1894
 [Form of questionnaire for furnishing information to the above mentioned Committee for improvement of the Land Acquisition Act, 1894.]

Questionnaire

A. Principles which should govern Acquisition of Land for a Public Purpose.

1. Public Purpose

The existence of a public purpose is a necessary condition for all acquisitions under the Land Acquisition Act but there is no indication in the Act of any test for determining whether a purpose is a public purpose; it gives only an inclusive definition of 'Public purpose' which includes provision of village sites.

- (a) Are you in favour of giving an exhaustive or illustrative definition of the expression 'public purpose'?
- (b) If so, what should in your opinion, be the definition?
- (c) Or, do you feel that such an attempt should not be made as it will leave no room for alteration in the light of changing circumstances?

2. Acquisition of lands for companies

The Act empowers the Government to acquire land only for—(1) a public purpose or (2) for a company. Acquisition of land can be made for a public purpose subject to the provisions of Part II and for a company subject to the provisions of Part VII of the Act.

- (a) Is it desirable to make a provision for acquisition of land for a company under Part II of the Act, when in the opinion of the appropriate Government, it is for a public purpose?
- (b) Or, do you think that acquisition of land for companies should be resorted to only under Part VII of the Act?
- (c) Would you like to make some exceptions, e.g., companies owned and controlled by Government? Give reasons in support of your answer. (See Annexure A for an extract of Part VII of the Act).*

3. Acquisition of Agricultural lands

- (a) Are you in favour of a statutory ban on the acquisition of good agricultural lands for non-agricultural purposes?
- (b) If so, what should be the criteria and machinery for determining whether any piece of land is a good agricultural land?
- (c) What special safeguards would you suggest to ensure that good agricultural lands are acquired only when no other suitable land is available?

- (d) Do you think that the safeguards provided in the Land Acquisition (Companies) Rules, 1963, are enough and the same should be extended to all cases of land acquisition?

B. Principles for Determining Compensation

4. Determination of market value

Section 23(1) provides that in determining the amount of compensation the market value of the land on the date of publication of notification under Section 4 shall be taken into account.

- (a) Do you think that sufficient evidence is available to the courts to arrive at a just compensation for the property to be acquired?

Or, do you think evidence on this part is exceedingly diffuse and unsatisfactory and in the end the court is left to make a more or less quasi-judicial guess?

- (b) Do you think that the Land Acquisition Act should itself lay down the factors which should be taken into consideration in this regard and that finding on those particulars should be asked to be recorded in writing on each point separately? If so, what are your suggestions in this regard?

5. Quantum of compensation

The general complaint of the public is that they do not get fair compensation for the acquired land.

- (a) Do you think that in ultimate analysis this is mainly because the prices of land go up in anticipation of the development by the Government and the owners compare this "speculative" increase in prices with what they are offered as compensation by the Government, instead of comparing it with what its value was on the day the Government declared its intention to acquire land?

- (b) Do you think that the time lag between date of issue of notification under Section 4 and award of the Collector is also responsible for making the amount of compensation look unreasonably low and this should be rectified by reducing the time lag and making allowance for normal increase in prices of land from the date of notification to the date of award by the Collector?

6. Reinstatement Value

Whether the principle of reinstatement should be made applicable in the case of acquisition of the buildings of public institutions like churches, hospitals, schools, etc.

*Part VII of the Act was forwarded with the Questionnaire. However, the same is not reproduced in the Report.

(The principle of reinstatement is that the owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or lands taken by premises or lands which would be to him of the same value.)

7. Solatium

The Act provides for payment of solatium at 15 per cent of the market value of land in addition to its market value.

Do you think that this provision should be retained as it is or should the quantum of solatium be revised upwards or downwards?

8. Material date for determining the market value

What should be the date for determining the market value of the land?

Should it be:

- (a) the date of notification under section 4; or
- (b) the date of declaration under section 6; or
- (c) the date of taking possession of land?

9. What should be the procedure for determining the compensation

(Under the existing law the Collector is empowered to determine the market value of land and to give his award. If the interested persons do not accept the award the matter has to be referred to civil courts.

It has been suggested that since the matter has to be decided eventually by a court, the Collector need not enter into elaborate proceedings for determining market value of land. He may obtain necessary information from his subordinates or from Government and on the basis of such material as is available to him, he can make an offer of compensation and, if possible fix the amount of compensation by negotiation. If no agreement is reached the Collector should, instead of giving an award straightaway refer the matter to the court. Do you favour this suggestion?

Or

Do you think that the existing procedure should continue because all the landowners do not go to the court; a number of them accept the award and hence it should be as scientific as possible?

10. Reference to court

Under the existing law, only a landlord who is not satisfied with the award of the Collector has a right, under section 18 to get the matter referred for determination of the court. Would you suggest any change in this provision?

11. (i) Potential use of land

Is there any valid reason why the potential value of the land should be excluded from consideration in determining the amount of compensation under section 23 of the Act?

(ii) Increase in value due to the unlawful use of land

It has been suggested that any increase in the value of land arising from its being put to unlawful use should not be taken into consideration and also that an increase in the rental value of a building which is so over-crowded as to be detrimental to the health of the inmates should be left out of consideration in determining compensation. What are your views on these points?

12. Payment of interest

The Land Acquisition Act provides for payment of interest at the rate of 6 per cent per annum. Do you think that it is on the high/low side?

C. Reasons for Administrative Delays and Remedial Measures

13. There is a general complaint about delays in finalisation of land acquisition proceedings. On the one hand there is complaint about difficulties in getting possession of land by Government expeditiously. On the other, the complaint from the persons affected is that there are unconscionable delays in the determination and payment of compensation.

(a) What, in your opinion, are the causes of delay? Are the procedures provided in the Act for land acquisition proceedings defective or is the delay due to administrative inaction, lack of adequate staff and proper supervision? What remedies, changes in the law would you like to suggest?

(b) Is it your opinion that the procedures laid down in the Land Acquisition Act, should be shortened? If so, what are your suggestions?

14. Empowering Collectors to issue notification under Section 4 and declaration under Section 6

(a) At present the authority to initiate land acquisition proceedings by notification under Section 4(1) vests in the Government. Do you think that this is one of the causes of delay and it will help matters if this power is delegated to the 'Collector' as defined in the Act?

(b) If you are in favour of such delegation, do you feel that some restrictions need be put on delegation of this power e.g., it may be permitted only:

- (i) where the area to be acquired is not large;
- (ii) where it is not proposed to invoke the urgency clause under Section 17;
- (iii) where the area to be acquired is not built up on with buildings or other valuable structure?

(c) Do you think that power to issue declaration under section should also be delegated to the 'Collector' as defined in the Act?

Or, do you feel that Government alone should continue to be the authority competent to take a final decision that a particular acquisition is necessary and should be proceeded with?

15. Fixing time limits for completion of acquisition proceedings

(a) Are you in favour of fixing any time limit for completion of land acquisition proceedings?

(b) If so, would you like to lay down a time limit for each stage of acquisition proceedings separately (e.g., for completion of inquiry under Section 5-A, issue of declaration under Section 6, hearing of objections under Section 9, award of compensation under Section 11)?

Or, are you in favour of laying down only an overall time limit for completion of acquisition, or both?

(c) What should be the consequences if the time schedule are not adhered to?

should the proceedings be nullified or payment of additional compensation interest will suffice?

(d) Are you in favour of the time limits in the Land Acquisition Act itself?

Or, do you feel that it will be advisable to prescribe the same in the rules/administrative instructions because it will have the advantage that non-adherence to the time schedule would not have the effect of rendering the proceedings or actions invalid?

(e) Do you think that, with a view to obviating delays in the acquisition proceedings, the Act should be amended providing that the survey, demarcation and joint measurement should be completed before the notification under Section 6 is published?

16. Special Powers in cases of urgency and emergency

(1) It has been pointed out that the limitation imposed by Section 17 on the type of land which can be acquired under the urgency clause (viz., Waste or arable land) has been responsible for delay in the execution of projects. Whether it is desirable to amend the provisions of Section 17?

(2) Sub-section (2) of Section 17 restricts the use of emergency powers for Railway Administration only.

Do you agree, that there may be other emergencies of the nature contemplated in that sub-section, such as, repairing of breaches in the means of communication, and hence the emergency provision should be extended to cover such other cases which may also include all projects of national importance?

D. Extent of Government Responsibility for Rehabilitation of evicted families and recommendations about discharge of this responsibility

17. Extent and nature of rehabilitation in cases of large projects

Do you think that over and above the compensation the cost of rehabilitation of displaced persons should be charged towards cost of acquisition and/or found out of general revenues or special levies?

18. If so, who, in your opinion, should be included in the category of displaced persons?

Should it include persons who indirectly suffer damages as a result of acquisition, e.g., the labourers, artisans and similar other classes of persons who lose their occupations due to wholesale shifting of the inhabitants when large areas are acquired?

19. What should be the extent and nature of rehabilitation?

20. Special levy:

While accepting the principle of rehabilitation in large projects, do you advocate betterment levy on those properties the value of which appreciates as a result of development activity? If so, what should be the form and extent of levy and what measures should be adopted to collect it?

21. In the wider public interest, are you in favour of making it obligatory upon the acquiring authority to make available land for land, etc., for the small holders so as not to disturb the subsistence equilibrium of the people affected by land acquisition? If so, are you in favour of realisation of advance betterment levy in kind from the beneficiaries and thus creating in each village a common pool of land which not only could be utilized for rehabilitation purposes but also for future requirements of land for various development purposes?

22. Interim payment of compensation

Are you in favour of paying interim compensation in cases where possession of land is proposed to be

taken under Section 17 before an award has been made under Section 11? If so, what, in your opinion, should be the extent of such interim payment?

E. Feasibility of enacting a uniform Central Law on Land Acquisition

23. Are you in favour of having a uniform law for acquisition of land throughout the country?

24. If so, do you think that the same principles should apply to all types of acquisition, e.g., slum clearance, irrigation channels, industrial development, town planning, national highways etc.?

25. Do you think that some constitutional difficulty will arise where the objects of some of the Acts, which incidentally contain provisions for acquisition of land, do not fall in the Concurrent List but fall exclusively in the State List? If so, what remedies would you like to suggest?

F. General

26. Where arable land is acquired but the purpose for which it is acquired has not been completed and is not going to be completed in the near future, are you in favour of the arable land being used by the former land owner?

27. Do you think that the provisions of Rule 5(1) of the Land Acquisition (Companies) Rules, 1963* (Annexure B) are a sufficient safeguard against the use of the land for any purpose other than that for which it is acquired? Would you suggest some other safeguards also?

28. Should the land be made available to the original owner, if he so desires, in case the same is not used for the purpose for which it was acquired?

Do you suggest any time-limit for retention of the land for use for the purpose for which it is acquired after the expiry of which time it should be made recoverable at the instance of the owner?

29. Is it not necessary that the Collector should consider the existing and factual condition and nature of the land to be acquired instead of entries relating thereto in the earlier land records?

30. Do you think that some penalty should be imposed upon authorities taking possession of the land without strictly fulfilling the necessary formalities laid down in the Land Acquisition Act?

31. Do you wish to offer any general suggestion for the improvement of the working of Land Acquisition Act?

32. Are you prepared to give evidence before the Committee, if so, which place is convenient for you.

Signature of the persons/
Association/Institute etc., answering
the questionnaire together with full
name and address in capital letters.

*These Rules form part of Annexure 'A' of Chapter 3 of the Report.

N.B. 1. The information as per the questionnaire duly signed may please be sent not later than 15-11-1967 to Shri D. B. Kulkarni, Joint Secretary, Government of India and Member-Secretary of the said Committee, C/o Ministry of Food, Agriculture, Community Development and Cooperation (Department of Agriculture), Krishi Bhawan, New Delhi. Time for sending replies to the questionnaire was extended upto 31st December, 1967. However, replies received after this date were also considered by the Committee.

2. The expression 'ACT' as used in the questionnaire means the Land Acquisition Act, 1894.

APPENDIX 6

LIST OF PERSONS/ORGANISATIONS/GOVERNMENT DEPARTMENTS WHO FURNISHED MEMORANDA/REPLIES TO THE QUESTIONNAIRE

The replies received have been classified in separate Sections as follows:—

Section 1.—Views/suggestions of the State Governments/Departments of Central Government.

Section 2.—Views/suggestions of individual officers.

Section 3.—Views/suggestions of Acquiring Departments.

- **Section 4.**—Views/suggestions of local bodies, Improvement Trusts, Panchayats and the like.

Section 5.—Views/suggestions of the Public Sector.

Section 6.—Views/suggestions of the Private Sector.

Section 7.—Views/suggestions of Land-owner.

Section 8(a).—Views/suggestions of legal Practitioners.

Section 8(b).—Views/suggestions of the Town Planners.

Section 9.—Views/suggestions of Political Parties.

I. Andhra Pradesh

Section 1

1. Revenue Department, Government of Andhra Pradesh, Hyderabad.

Section 2

2. Shri R. M. Sastry, I.A.S., District Collector, Cuddapah.
3. Shri M. A. Haleem, I.A.S., Collector, Warrangal District.
4. Shri S. V. Giri, I.A.S., District Revenue Officer, Kurnool.
5. Collector, Guntur.

Section 5

6. The Chairman, Vishakhapatnam Port Trust, Vishakhapatnam.

Section 7

7. Shri Uppaturi Channaiah, Resident of Ghatkesar, Hyderabad East Taluk, Hyderabad Distt. (Andhra Pradesh).
8. Shri K. Raghuramiah and 21 other Land Owners of Vijayawada, (A.P.).
9. Shri Kodali Venkata Ratnam of Patamata Village, Vijayawada Taluk, Krishna Distt.
10. Ten Ryots of village Yenamalakuduri, Vijayawada Taluk, Krishna Distt.
11. Shri Kilari Venkatapaiah of Patamata Village, Vijayawada Taluk, Krishna District.

12. Shri Nalluri Sitharamanna of Patamata Village, Vijayawada Taluk, Krishna District.

13. Shri Kodali Dhasaradha Ramaiah, Patamata Village, Vijayawada Taluk, Krishna District.

14. Shri Cherukuru Ramakotaiah & 2 others, Village Kesarapalli, Gannavaram Taluk, Krishna District.

15. Shri Chinu Nageswara Rao, Village Patamata, Vijayawada Taluk.

16. Shri Kamineni Krishna Murthy, Village Patamata, Vijayawada Taluk, Krishna District.

Section 8(a)

17. Shri D. V. Sitharamamoorthy, Advocate, with eight others, Yelamanchilli, Vizagapatnam District.

Section 9

18. Shri J. M. Lobo Prabhu, I.C.S. (Retd.), M.P., Chateau de Lou, Mangalore.

19. Shri Vishwasrai Narasimha Rao, M.P. (Lok Sabha), Vanduva Thadi Post, Verraghatani, via Srikakulam District.

20. Shri Sunkara Satyanarayana, General Secretary, Andhra Pradesh Swatantra Party, Vijayawada.

21. Shri Koganti, Venkateswara Rao, Vice President, Krishna District Swatantra Party, Vijayawada.

22. Shri Gummadi Raja Gopalarao, General Secretary, Vijayawada City Swatantra Party, Vijayawada-2.

23. Shri Gorrepatti Venkata Subbayya, Hony. President, Andhra Pradesh, Kisan Sammelan, Vijayawada-2.

II. ASSAM

Section 1

1. Government of Assam, Revenue (Land Revenue), Department, Acquisition Branch, Shillong.

Section 2

2. The Deputy Commissioner, Kamrup, Gauhati.

Section 5

3. The Fertilizer Corporation of India, Ltd., Kamrup Division, Kamrup (Assam).

4. Shri C. R. Ghoshal, Senior D.M.A., Oil and Natural Gas Commission, Sibsagar.

Section 7

5. Shri D. D. Lohiam, Member, State Planning Advisory Board, Assam and Town and Country Planning Advisory Council, Assam, Shillong.

III. Bihar

Section 1

1. Shri S. N. Malik, Deputy Secretary to Govt., Revenue Department & Director, Land Acquisition, Bihar, Patna.

Section 2

2. Shri K. P. Narayan, Director, Project Lands & Rehabilitation, Bokaro Steel Project, Dhanbad.
3. Shri S. P. Sinha, Asstt. Director, (Economics & History), Bihar Tribal Welfare Research Institute, Ranchi.
4. Shri Ramdhar, Deputy Secretary, Forest Department, Govt. of Bihar, (Chief Conservator of Forests, Bihar).
5. Assistant Magistrate & Collector, Gaya.

Section 3

6. Shri Ataur Rahman, Executive Engineer, P.W.D., Gaya Division, Gaya.
7. Shri Rajiv Ramjah Pathak, Executive Engineer, P.W.D., Gaya, West Division, Gaya.

Section 4

8. Shri T. Prasad, Administrator, District Board, Santhal Parganas, Dumka.
9. Shri H. N. Joshi, Chief Administrator, N.C.D.C. Ltd., Ranchi.
10. Shri D. P. Singh, Director of Rehabilitation and Land Acquisition, D.V.C.

Section 6

11. Deputy Secretary, Indian Colliery Owners Association, Dhanbad, E. Rly.
12. Shri V. Ramaratnam, Secretary, Pyrites & Chemicals Development Co. Ltd., Dehri-on-Sone, District Shahabad (Bihar).
13. Shri Tileshwar Rai, Hindustan Oil Engines Co., Manpura, Patna.

Section 7

14. Shri Jitendra K. S. Chavan, Swatantra Bhawan, Patna.
15. Secretary, Bhu Raksha Kisan Samiti, Saguna Nayatola, Denapur Cantt., Patna.
16. Shri Lal Ranvijai Nath Shah Deo, Morabadi Road, Ranchi.
17. Shri Ram Narain, Ranchi.
18. Shri Lal Ambika Nath Shah Deo, P.O. Hatia, Ranchi.
19. Shri Kishunlal Marwari, Ranchi.
20. General Secretary, Jharkhand Rajya Morchi, Ranchi.
21. Chief Secretary, Akhil Bhartiya Adivasi Vikas Parishad, Bihar, Ranchi.
22. Shri Alakh Deo Singh, Principal, Mahavir Higher Secondary School, Gaya.

23. Shri Bishun Deo Prasad, Principal, Ashok Higher Secondary School, Paraiya (Gaya).
24. Shri K. L. Gupta, P.S.G. Distributor, Macleed-gunj, Gaya.
25. Shri Rameshwar Pd., Mahalla Kiranighat, Gaya.
26. Shri Subodh Krishna Mitra, Principal, Haridas Seminary, Gaya.
27. Shri Saguni Sinha, Nagwan, Maner, Patna, P.O. Bakpura.
28. Dr. Shiva Pratap, Singhrajpapur, Patna, & Dr. S. P. Sinha, Rajapur, Patna.
29. Shri Atma Ram Yadav, Gorai Toli, Patna.
30. Shri Mahendra Singh, Munda, Secy., Akhil Bhartiya Adivasi Vikas Parishad, Bihar, Ranchi.
31. Shri S. K. Rai, Secretary, Sanyukt Socialist Party, Dhanbad.

Section 8(a)

32. Hon'ble the Chief Justice and the Hon'ble Judges of the High Court of Judicature at Patna.
33. Shri Girish Nandan Sinha, Advocate, High Court, Patna.
34. Shri Shambhu Prasad, Advocate, Govt. Pleader, Ranchi.
35. Shri Deonandan Prasad Sinha, Advocate, Gaya.
36. Shri Ambica Prasad Sethi, Gaya.
37. Shri Janardan Prasad, Advocate, Gaya.
38. Shri Ram Raj Sinha, Law Officer, Gaya Municipality, Gaya.
39. Shri Siya Kant Jha, Patna.
40. Shri Mohit Kumar Bose, Advocate, Shyam Babu's Kothi, Gaya.
41. Shri S. N. Sinha, Advocate, Ranchi.
42. Shri Laxmi Narain Yadav, Advocate, Patna High Court, Patna.
43. Shri K. N. Singhal, Advocate, Gaya.
44. Shri Lalnarayan Sinha, Advocate General, Bihar, Patna.
45. Shri Ram Awatar Sastri, Member of Parliament, Patna.
46. Shri Budhan Rai Verma, Convener, Swatantra Party, Bihar, Patna.

IV. Gujarat

1. Government of Gujarat.

Section 2

2. Shri Ambalal P. Kansara, Ex-EST (Gazetted) Assistant Chitnis to the Commissioner, Baroda Division, Member Departmental Council, Kansara Bazar, Broach (Gujarat).

3. Shri M. V. Puvar, Taluka Development Officer, Mehmedabad.
4. Shri M. B. Mankar, Taluka Development Officer, Anjar (Kutch).
5. Shri S. L. Kapoor, Engineer, Department of Lighthouses and Lightships, Jamnagar.
6. Shri Kumar B. Singh, Dy. District Development Officer, Ahmedabad.
7. Shri S. D. Joshipura, Taluka Development Officer, Ahmedabad.

Section 3

8. Director of Lighthouses and Lightships, Jamnagar.

Section 4

9. President Kaira District Panchayat, Nadiad, (Gujarat).
10. District Development Officer, Panchmahals, Godhra.
11. District Development Officer, District Panchayat, Kutch, Bhuj.
12. Taluka Development Officer, Borsad.
13. Taluka Development Officer, Dholka.
14. Sarpanch Gram Panchayat, Rojia.
15. Project Officer cum Taluka Development Officer, Bansda.
16. Estate Officer, Municipal Corporation, Ahmedabad.
17. Taluk Development Officer, Dhrangadhra.

Section 5

18. Shri D. C. Patel, Housing Commissioner, Gujarat Housing Board, Ahmedabad.
19. Shri H. R. Pataskar, Chief Executive Officer, Gujarat Industrial Corporation, Ahmedabad.
20. Shri J. V. Vyas, Secretary, Gujarat Electricity Board, Baroda.
21. General Manager, Gujarat State Road Transport Corporation, Ahmedabad.
22. Managing Director, Gujarat State Road Transport Corporation, Ahmedabad.
23. Senior Executive Engineer, Gujarat State Road Transport Corporation, Ahmedabad.
24. Law and Estate Officer, Kandla Port Trust, Kandla Port.

Section 6

25. Secretary, the Federation of Gujarat Industries, Baroda-5.

Section 7

26. Shri Lallubhai Patel, At and Post Ranoli, Taluka Baroda, District, Baroda.
27. Shri K. M. Patel, President, Gujarat Khedut Sangh, Ramwadi, Sardar Bang, P.O. Bardoli, Dist. Surat.

28. Shri Shah Ochchhavlal Chunilal, Minewala.
29. Shri Shamalbhai Patel, M.L.A., Gujarat State.
30. Green Land Holders' Association, Ahmedabad.
31. Shri Chunibhai Chhotabhai Patel & 4 others, Navagam, Taluk Matar, Distt. Kaira.
32. Shri Kishor Sinh K. Parmar, M.L.A., Santram-pur, Ahmedabad.
33. Shri Varvaji Ravaji Vaghela, Sarpanch, Kolavda Village Panchayat with 4 others.
34. Shri Kodarsing Roomalsing, Kamalaj (Prantvel), Taluka Dayad with one other.
35. Shri Shankerlal Mathuradas with 16 others, at Karachiya, via Bajwa, Taluka Baroda.
36. Shri Sundarji Punjabhai, Lakhdhirnagar and 3 others.
37. Shri J. N. Patel, Morvi Taluka.

Section 8(a)

38. Prof. H. C. Dhokia, Dean, Faculty of Law, Baroda.
39. Shri V. J. Desai, Advocate, Supreme Court, Ahmedabad.
40. Shri Kantilal, Advocate, Ahmedabad.

Section 9

41. Shri G. C. Patel, Swatantra Party, Ahmedabad.

V. Haryana

Section 1

1. The State Government of Haryana, Revenue Deptt.

Section 7

2. Chaudhari Chander Bhan, Gurgaon.
3. Shri Kishan Das S/o Shri Moosa Mal, Faridabad.
4. Shri Narain Pershad, Faridabad.
5. Shri Jagdish Chand, Faridabad.
6. Shri Ram Autar, Faridabad.
7. Shri Banarsi Das, Faridabad.
8. Shri Radhe Lal Ram Lal, Faridabad.
Members, Haryana Pattedar Dwami Sangharash Samiti, Faridabad.
9. Shri Girdhari Lal Gupta, Bassapara, Faridabad.
10. Shri Khichu Mal, S/o Shri Girdher Mal, Faridabad.
11. Shri J. N. Sachdeva, Retired Government Servant, Landlord and Pattedar Dwami, Faridabad.
12. Shri Bhagwan Dass, Faridabad.
13. Shri Om Parkash, Faridabad.
14. Secretary, Pattedaran Dwami Sangharash Samiti, Faridabad.
15. President, Pattedaran, Dwami Sangharash Samiti, Faridabad.

16. Shri Deva Singh, M.A., P.E.S.I. (Retd.), Bhiwani.
17. Shri Girdhari Lal Gupta and 48 others, Faridabad.

Section 9

18. Shri Rao Gajraj Singh, M.P. (Lok Sabha), Advocate, Gurgaon.
19. Shri D. D. Gupta, Distt. Farmers' Forum, Gurgaon.

VI. Kerala

1. The State Government of Kerala, Revenue 'B' Department.

Section 7

2. Shri V. G. Sunumaran, Erimayr, P.O. Distt. Palghat, (Kerala).
3. Shri Attokaku Antony Davessy, Puttunpetta, Trichur (Kerala).
4. Shri K. K. Kwruvilla, Agriculturist, Kannwkw-zhyil, Pwthwpally P.O., Kottayam, Kerala.
5. Shri A. Srinivasan, T.C. 1074, Post Office Lane, Trivendrum.

Section 8(a)

6. Shri K. Madhavan Nair, Advocate, Kayalam, Kythamukku, Trivandrum.
7. Shri A. Madhava Wariar, Advocate.

Section 9

8. Shri K. Chandrasekharan, M.P. (Rajya Sabha).
9. Shri P. R. Kurup, Leader, Samyuktha Socialist Parliamentary Party, Kerala, Trivandrum.

VII. Madhya Pradesh

Section 1

1. Revenue Department, Government of Madhya Pradesh.

Section 2

2. Shri J. P. Patel, Agronomist, Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur.
3. Shri P. G. Mudaliar, Collector, Ratlam, District Ratlam.

Section 5

4. Shri N. Sanyal, Principal, Western Regional Institute for Technical Teacher Training, Bhopal.

Section 7

5. Shri Gokuldas Dee Dongra, Khazgi Bazar, Laskar, (Gwalior).
6. Mrs. M. Ghosal, Bhopal.
7. Shri Fakhruddin, Ahsan Building, Hamidia Road, Bhopal.
8. Shri Anwar Mohd. Khan, Ex-Captain, Bara Mahal, Sahajehanabad, Bhopal.
9. Shri Mohandas Kalumal, 26, Sindhi Colony, Baireya Road, Bhopal.

10. Shri Sarferaz Mohd. Khan, S/o Late Captain Aziz Modh. Khan, Bhopal.

Section 8(a)

11. District Judge, Kolhapur, Kolhapur.
12. District and Sessions Judge, Jalgaon.
13. Shri R. S. Machalpurkar, Supreme Court, Advocate, Indore.

Section 9

14. Chaudhary Nitiraj Singh, M.P. (Lok Sabha), Advocate, Narasinghpur.
15. Shri N. C. Zamindar, Swatantra Party, Indore.

VIII. Maharashtra

Section 1

1. Government of Maharashtra.

Section 2

2. Collector, Dhulia.
3. Collector, Wardha.
4. Project Officer cum Taluka Development Officer, Santrampur.
5. Commissioner, Aurangabad.
6. Collector, Poona.
7. Special Land Acquisition Officer, Bombay and Bombay Suburban District, Bombay.
8. General Manager, B.E.S.&T., Best House, Bombay-1.

Section 3

9. Irrigation & Power Department, Government of Maharashtra, Bombay.
10. Central Designs Organisation, Near Esso Building, Bombay.
11. National Highways Circle, (B&C Department), Maharashtra, Bombay.
12. Public Health & Housing Department, Maharashtra, Bombay.
13. Manager, Western Railway, Bombay.

Section 4

14. Municipal Corporation of Greater Bombay.
15. Maharashtra Housing Board, Bombay.
16. Dr. B. G. Ghate, Chairman, Nagpur Improvement Trust, Nagpur.
17. Zila Parishad, Aurangabad.

Section 5

18. The Fertilizer Corporation of India Ltd., Trombay, Division, Bombay.
19. Senior Geologist, Manganese Ore (India) Ltd., Nagpur.
20. Indian Oil Corporation Ltd., Bombay.

21. Secretary, Bombay Port Trust, Bombay.
22. General Manager, Maharashtra State Road Transport Corporation, Bombay-8.
23. Shri P. M. Kulkarni, Maharashtra Industrial Development Corporation, Bombay.
24. Shri V. K. Naik, Assistant Legal Adviser, Maharashtra State Road Transport Corporation, Bombay.
25. Managing Director, Hindustan Antibiotics Ltd., Poona.
26. M/s. Sahu Brother (Saurashtra) Private Ltd., Bombay.
27. Honorary Secretary, Federation of Electricity Undertaking of India, Bombay.
28. The Ausar Cooperative Housing Society Ltd., Bombay.
29. Secretary, Mazagon Ltd., Bombay.

Section 7

30. Shri Hector Gracious, Bombay.
31. Shri N. M. Kapadia and 4 others, Bombay.
32. Dr. K. V. Joglekar, Bombay-64.
33. Shri M. H. Thacker, Bombay.
34. Shri N. S. A. Halim, Santacruz East, 55 AS, Bombay.
35. Shri H. A. H. Eisa, Bombay.
36. Secretary, Goregaon Pravasi Sangh, Bombay-63.
37. S/Shri S. M. Durve & S. S. Durvey, Distt. Kolaba.
38. S/Shri J. J. Dubash and P. J. Dubash, Bombay.

Section 8A

39. Shri J. H. Dalal, Advocate, Secretary, Bar Council of Maharashtra, Bombay.
40. Shri D. R. Dhanuka, Member, Bar Council of Maharashtra, Bombay.
41. Shri D. R. Patil, Advocate, Erandol.

Section 8B

42. Shri B. T. Talim, Director of Town Planning, Maharashtra State, Poona.
43. Shri M. U. Ansari, Consultant and Adviser, Land Acquisition Survey, Revenue, Estate Management etc., Bombay.

Section 9

44. Shri Piloo Mody, M.P. (Lok Sabha), Bombay.

IX. Mysore

Section 1

1. Government of Mysore, Revenue Deptt., Bangalore.

Section 2

2. Shri R. Srinivasan, Commissioner for Land Records and Ex-officio Revenue Secretary to Govt., Bangalore.

3. Shri D. M. Venkataramiah, I/c Commissioner for Land Reforms and Ex-officio Revenue Secretary, Bangalore.

4. Shri M. V. Pandit, Divisional Commissioner, Belgaum.

5. Deputy Commissioner, Shimoga District.

6. Assistant Commissioner, Gulbarga.

7. Deputy Commissioner, Gulbarga.

8. Assistant Commissioner, Yadgiri Sub-Division, Distt. Gulbarga.

9. Shri K. S. Malle, Gowda, Deputy Commissioner of Coorg, Mercara.

10. Deputy Commissioner, Chitradurga District.

11. Mirza Abdulla Baig, Spl. Deputy Commissioner, Raichur.

12. Shri Samuel Appaji, Deputy Commissioner, Hassan District.

13. Shri S. Shankara Rao, I.A.S., Divisional Commissioner, Gulbarga Division.

14. Shri R. N. Vasudeva, Divisional Commissioner, Bangalore Division.

15. Shri M. S. Swaminathan, Divisional Commissioner, Mysore Division.

Section 4

16. Shri L. V. Bhatt, President, Taluka Panchayat, Babra.

Section 6

17. Shri V. Janakiraman, Chairman, The Bangalore Welfare Association & Cooperative Housing Societies Committee, Bangalore.

Section 7

18. Shri H. V. Subba Rao, Land Holder, Hony. Secy., The Chikmagalur District, Areca Grower's Association, Koppa-Kadur.

19. Shri K. R. Chandrashokhra Rao, Thoranga DDE Sringeri—CKM, Mysore State.

20. Shri Kavali Laxminarayanappa, P.O. Shanuvally, KOPPA—CKM.

21. Shri B. V. Hanumantha Rao, 'SREENIVASA' Koppa-Kadur P.O.

22. Shri G. M. Manjanathaya, Planter, Suntikoppa (Coorg).

23. Shri Amin Uddin Khan, Pradhan, Rari Buzurg.

24. Shri T. Anantha Rao, General Secretary, Agriculturists Association, Mysore District, Mysore.

25. Shri N. C. Sargent Bishop, Church of South India Trust Association, Bangalore-27.

26. Malenad Raits Association, Hassan District, Belur.

27. Shri M. Vazeer Ahmed, 13, Dickenson Road, Bangalore-1.

28. Shri R. Narasimhiah, Ex-General Secretary, Farmer's Forum, Bangalore.

29. Shri B. I. Hanumanthappa, 43, Kalhalli, Bangalore-1.
30. Shri B. S. Ganapathy Rao, Berakodagu, B.P.O. Hosakoppa, Koppa—CKM, Mysore State.
31. Shri T. Krishna Rao, Advocate General for Mysore, Bangalore.
32. Shri H. V. Srikanta Bhatta, Shri T. N. Krishna Bhatta, Advocates, Narasimharajapura.
33. Shri S. V. Shama Rao, Advocate, Ranganatha Buildings, Balepet, Bangalore-2.
34. Shri K. Chandy, Advocate, Fraser Town, Bangalore-5.

Section 9

35. Shri Nuggchalli Shivappa, M.P. (Lok Sabha).
36. President, Swatantra Party, Mysore State, Bangalore.

X. Orissa

Section 1

1. Shri S. K. Mohapatra, Deputy Secretary, Revenue Department, Government of Orissa, Bhubaneswar.

Section 5

2. Managing Director, Orissa Fisheries Development Corporation Ltd., Cuttack.
3. Deputy General Manager, Hindustan Steel Ltd., Durgapur-8.
4. Secretary, Rourkela Fabrications Ltd., Rourkela-4.
5. Shri S. L. Tandon, Chief Administrative Officer, Hindustan Aeronautics Ltd., Bangalore-1.
6. Shri K. C. Singh Dco, Town Administrator, Rourkela Steel Plant, Rourkela.

Section 7

7. Shri Chandraman Patnaik, Hillpatna, Behrampur (GM).
8. Shri Ignace Kispotta & 60 other persons of Jhirpani Colony, Rourkela.
9. Shri Chandra Mohan Das, Retd. I.A.S., Puri.
10. Shrimati Bauri Devi, W/o Shri Kashinath Mishra, Puri.
11. Shri Loknath Mishra.
12. Shri Dibakar Rath with 14 other persons, Biramachandrapur.
13. Shri Shyambandhu Mishra, Puri.
14. Shri Sri Bauribandhu Sahoo.
15. Shri Kasinath Misra, S/o late Shri Biswanath Misra.

Section 8(a)

16. Shri Bipin Bihari Mishra, Advocate, P.O. Rourkela.

Section 9

17. Shri S. Supakar, M.P. (Lok Sabha), Jharvapura, Sambalpur, Orissa.
18. Shri Srinibas Mishra, M.P. (Lok Sabha), Rajabagicha Labour Colony, Cuttack.

XI. Punjab

Section 1

1. The Government of Punjab, Revenue Deptt., Chandigarh.

Section 2

2. Shri Lal Singh Kang, Acting District Collector, Jullunder.
3. The Deputy Commissioner, Amritsar.
4. The Deputy Commissioner, Hoshiarpur.
5. The Deputy Commissioner, Kapurthala.

Section 5

6. Shri S. S. Gill, Director Incharge, Punjab State Irons Ltd., Chandigarh.

Section 7

7. Shri Gurdial Singh, Patiala.
8. Dr. Sham Lal Narula, Major (Retd.), 'Prem Versha', 46-Lehal, Patiala.
9. Shri Jagjit Singh Mann, Patiala.

XII. Rajasthan

Section 1

1. Shri N. C. Bhatnagar, Revenue Secretary, Government of Rajasthan, Jaipur.

Section 2

2. Shri U. R. Bhandaree, Civil Judge, Sanbhar, (Distt. Jaipur), Rajasthan.
3. Shri U. L. Sharma, S.D.O., Vallabhagar, (Rajasthan).
4. Shri Sunder Lal Bhatt, Land Acquisition Officer, (UIT), Udaipur (Rajasthan).

Section 4

5. Shri N. J. Purohit, Chairman, Urban Improvement Trust, Jodhpur.

Section 7

6. Shri Girdhai Lal Sharma, President, Nagar Sudhar Samiti, Udaipur.

Section 8(b)

7. Dr. J. S. Rao, Professor of Rural Sociology, V. B. Rural Institute, P. G. Department of Rural Sociology, Udaipur.

XIII. Tamilnadu

Section 1

1. Revenue Secretary, Govt. of Tamilnadu.

Section 2

2. Shri S. A. Viswanathan, Collector, Salem.
3. Shri N. Haribhaskar, Collector, Tiruchirappalli.
4. Shri A. M. Nabi, Collector, Madras.
5. Shri K. S. Narasimhan, Collector of Madurai.
6. Shri Lashmikanthan Bharati, Collector of Chingleput District.
7. Shri A. S. Ahluwalia, Collector of Nilgiris.
8. Shri C. N. Raghavan, Collector, Nagercoil.
9. Shri A. M. Nabi, Collector of Madras.
10. Shri M. M. Rajendran, Collector, Tirunelveli.
11. Shri A. S. Bhaskaran, Soil Conservation Officer, Bellary Cantt.
12. Director of Lighthouses and Lightships, Madras.
13. Shri S. P. Ambrose, Collector, Coimbatore.
14. Shri G. Sundaram, Dev. Secy., cum-Collector and Distt. Magistrate Pondicherry.
15. Shri G. Thirumal, Collector, Dharmapuri.
16. Shri A. S. Vankataraman, I.A.S., Collector.

Section 5

17. Shri R. Bhuvarachamurthy, Chairman and Engineer, State Housing Board, Madras.
18. Managing Director, Neyveli Lignite Corporation Limited, Neyveli.
19. Madras Port Trust, Madras.

Section 6

20. Secretary, South Indian Sugar Mills Association, Madras.
21. Secretary and Adviser, United Planters' Association of South India, Coonoor.

Section 7

22. Shri P. J. Wilson, Starland House, Pacode.
23. Shri P. Venkataraman, Sankaridrug--Salem.
24. Shri K. V. Krishnaiyer, Seevapet-Salem.
25. Shri V. S. Devendra Raja, Rajapalaiyam.
26. Shri K. S. Visweswaraiah, Sonnekudige.
27. Shri B. Viswanathiah, Begar.
28. Shri K. Srinivasan, Madras.
29. Shri V. Churaswami, Madras.
30. Shri C. V. Ranganatha Sastri, Madras.
31. Shri C. Rathinasabapathy, Perumbadi Village, North Arcot Distt.
32. Shri K. Baboo, Tirupati (Madras).

Section 8(a)

33. Shri V. S. Ramaswami Iyengar, Advocate, Nagapattinam.

Section 9

34. Dr. H. V. Hande, Joint Secretary, Tamilnadu Swatantra Party, Madras.
35. Shri M. S. Sivaprakasam, Advocate and Landlord and President, District Swatantra Party, Chingleput.
36. Shri K. Sundram, M.P., Coimbatore.

XIV. Uttar Pradesh**Section 1**

1. Shri Athar Husain, Revenue Secretary, Govt. of U.P.

Section 2

2. Shri Ram Kishore Verma, Zila Panchayat Raj Adhikari, Lakhimpur Khari.
3. Shri M. W. Hasan, Distt. Land Acquisition Officer, Gonda.
4. Shri R. K. Bhargava, Collector, Mirzapur.
5. Shri C. S. Negi, Deputy Commissioner, Almora.
6. Shri B. N. Rai, Addl. Collector, Dehra Dun.

&

Shri Jagdish Chandra Kukrety, Deputy Land Acquisition Officer (Irrigation), Meerut.

7. Shri Gauri Shankar Mishra, District Panchayat Raj Officer, Etawah.
8. Shri Arvind Verma, Collector, Etawah.
9. Shri R. C. Saxena, Block Development Officer, Dataganj, Distt. Budaun.
10. Deputy Commissioner, Bahraich.
11. Shri R. C. Jain, Additional District Magistrate, Naini Tal.
12. Shri Srivastava, Chief Engineer.
13. Shri Avadh Naresh Singh, Special Land Acquisition Officer, Kanpur.
14. Shri M. Afzal Ullah, Mukhtar-av-am of Mst. Saleha Bibi, etc. owners of Manbella Grave, Qazipur Khurd, Gorakhpur.

Section 4

15. Shri Suraj Pal Singh, Pradhan, Gaon Sabha Arhgaon Pasakhara.
16. Shri Bishambhar Singh, Pradhan, Gram Sabha, Village Kundal, Distt. Agra.
17. Shri Sidhu Ram, Pradhan, Gram Sabha Shyama, Distt. Agra.
18. Shri Shiv Charanlal, Pradhan Village Sabha, Bagda.
19. Shri Ram Murti Mishra, President, Gaon Sabha, Kundi Varanasi.

20. Shri Raghunath Singh, President, Gaon Sabha.
21. Collector, Shahjahanpur.
22. Pradhan Gaon, Sabha, Tarikhet, Distt. Almora.
23. Shri Panna Lal, Pradhan, Fatehpur Chaurasi.
24. President, Nagar Mahapalika Area, Kanpur.
25. Shri Shyam Lal, President Gram Sabha, Shah-jehanpur.
26. Shri Maqsood Hasan Khan, Gram Sabha Malhoopur, Tehsil Jalalabad.
27. Shri S. Hamid, U.P. Housing & Development Board, Lucknow.

Section 5

28. Shri A. C. Mathur, General Manager (C), Tri-veni Structurals Limited, Naini (Allahabad).

Section 6

29. Shri D. R. Chadha, President, PWD Coop. Housing Society Ltd., Kanpur.
30. Shri Lokmani Lal, Governing Director, Farrukhabad Cold Storage (P) Ltd., Allahabad.
31. Dr. Hammad Usmani, Unani Medical College, Allahabad.

Section 7

32. Shri K. S. Bharathi, Dehra Dun.
33. Shri Ram Krishna, Genl. Secy., U.P. Makan Malik Sangh, Varanasi.
34. Shri Surendra Singh, Nai Basti, Shikahabad, Mainpuri.
35. Shri Inder Raj Sarup, Muzaffarnagar.
36. Shri Shrishti Narain Pandey, Pradhan Gram Birera, Mirzapur.
37. Capt. C. L. Kohli, P.O. Malaknagar, Ghaziabad.
38. Shri R. S. Singh Gaur, President, "CIVICO", Kanpur.
39. Shri Durga Prasad Tewari, P.O. Navbasta Hamirpur Road, Kanpur.
40. Shri Parushottam Chandra, 44, Nayaganj, Ghaziabad.
41. Shri Narain Das, Ex. M.L.A., Shri Naresh Bahadur Singh, Shri Lalita Prasad Srivastava, Shri Dwarika Nath Tandon and Shri Mohd. Iqbal, Lucknow.
42. Assistant Secy., U.P. Sunni Central Board of Waqfs, Lucknow.
43. Shri V. N. Sharma, Capt. (Retd.), Kanpur Road, Lucknow.
44. Shri Brijpal Das, Sundar Villa, Maqbool Alam Road, Varanasi.
45. Secretary, U.P. Malik Makan Sangh, Varanasi.
46. Shri Ram Phul Singh and Shri K. D. R. Pandey, Gonda.

47. Shri Bhupendra Nath Srivastava, Lucknow.
48. Shri S. P. Mehra, Kanpur.

Section 8(a)

49. Shri A. S. Srivastava, Joint Registrar, High Court of Judicature, Allahabad.
50. Shri Surya Varma, Advocate, Agra.
51. Shri H. C. Bhatt, Distt. Government Council, Nainital.
52. Shri K. K. Narain, Advocate, High Court, Lucknow.

Section 9

53. Shri Prabhakar Tripathi, M.L.A., Secy., Indian National Trade Union Congress (U.P. Branch), Kanpur.

XV. West Bengal

Section 1

1. Land and Land Revenue Department, Govt. of West Bengal.

Section 2

2. Commissioner Presidency Division, 11 Netaji Subhas Road, Calcutta.
3. Secretary, Commerce & Industries (Durgapur Industries) Department, Govt. of West Bengal.
4. Shri S. C. Roy, M. C. Director, C.F.C., Govt. of West Bengal.
5. Shri V. S. C. Banerjee, Additional Member, Board of Revenue, West Bengal.
6. Commissioner, Burdwan Division, CHINSURAH.

Section 3

7. Shri B. R. Karnik, Director of Lighthouses and Lightships, Calcutta.
8. General Manager, E. Railway, Calcutta.

Section 5

9. West Bengal State Electricity Board, Calcutta.
10. Durgapur Development Authority, Durgapur (West Bengal).
11. Secretary, Calcutta Port Commissioner.
12. Shri S. S. Roy, Deputy Secy., Damodar Valley Corporation, Calcutta.
13. Special Land Acquisition Officer, Farraka Barrage Project.
14. General Manager, Farraka Barrage Project.

Section 6

15. Secretary, Indian Tea Association, Calcutta.
16. Deputy Secretary, Bharat Chamber of Commerce, Calcutta.
17. Secretary, Indian Sugar Mills Association, Calcutta.

18. Secretary, Indian Mining Association, Calcutta.
19. Secretary, Bengal National Chamber of Commerce & Industry, Calcutta.
20. Indian Chamber of Commerce, Calcutta.
21. Secretary, Indian Jute Mills Association, Calcutta-1.
22. Secretary, Indian Mining Federation, Calcutta.
23. The Bengal Chamber of Commerce & Industry, Calcutta.

Section 7

24. Shri Madan Das, President, Howrah District Krishak Samity, Howrah.
25. Shri Wm. H. G. Mawer, No. 8, Sudder Street, Calcutta-16.
26. Shri S. L. Dhanuka, 19, R. N. Mukherjee Road, Calcutta-1.
27. Shri A. K. Roy, Farmers' Forum, Malda.
28. Shri B. Bhattacharya, Paschim Banga Krishak Samaj, Calcutta.
29. Shri N. C. Mukherji, 11, Old Post Office Street, Calcutta.
30. Shri Aditya Gopal Roy and others.
31. Krishak Samaj, Calcutta.
32. Shri A. K. De, Calcutta.
33. Shri M. M. Banerjee, Bhadreswar, Distt. Hooghly.

Section 8(a)

34. Shri Dinesh Chandra Majumdar, Advocate, Supreme Court of India, Calcutta.
35. Dr. B. N. Mukherjee, Principal (Offg.), University College of Law, Calcutta.
36. Shri S. K. Sen, President, Civil Court Bar Association, Howrah.
37. Secretary, Alipore Bar Association, 24-Parganas.
38. Shri B. C. Banerjee, Govt. Pleader, Howrah.

Section 9

39. Shri Satyendra Prasad Ray, Member of Parliament (Rajya Sabha).
40. West Bengal Provincial Kisan Sabha, Calcutta.

UNION TERRITORIES

XVI. New Delhi

Section 1

1. Secretary (Land & Building), Delhi Administration.

Section 2

2. Shri B. N. Tandon, Collector & Secretary (Revenue), Delhi Administration.
- 33-1 M. of F. & A./70

Section 4

3. Shri M. L. Mongia, Secretary, Delhi Development Authority.

Section 6

4. Deputy Secretary, Federation of Indian Chambers of Commerce & Industry, New Delhi.
5. Sangeet Akademi, National Academy of Music, Dance and Drama for India, New Delhi.
6. General Manager, Industrial Finance Corporation of India, New Delhi.
7. Honorary Secretary, the Ministry of Commerce & Industry Cooperative House Building Society, Limited, New Delhi-11.
8. Shri Om Prakash Aggarwal, DLF Housing & Construction (P) Ltd., New Delhi.

Section 7

9. Shri Jaipal Singh, Sunder Nagar, Delhi.
10. Shri Nasib Singh, General Secretary, Delhi State Unapproved Colonies Federation, New Delhi.
11. Hon. General Secy., All India Women Conference, New Delhi.
12. Shri P. L. Gupta, Krishan Nagar, Delhi.
13. Shri D. D. Grover, New Rajinder Nagar, New Delhi.
14. S/Shri Charan Singh and Ram Prakash, Ghaziabad.
15. Shri Mehr Chand, Delhi Dehat Kalyan Samiti, Badli, Delhi.
16. Shri R. S. Gupta, Secy., Dehat Cooperative Multipurpose Society Limited, Haiderpur (Delhi).
17. Shri Devi Ram, Delhi.
18. Shri Parm Pawittar Singh, New Delhi.
19. Shri Laxmi Narain, New Delhi.
20. Shri Lekhraj Badaldas, M-1/2, Rajouri Gardens, New Delhi.
21. Shri Hans Raj Verma, President, Humayunpur Extn. (Arjan Nagar), Welfare Association Shanti Niwas, Arjan Nagar, P.O. Yusuf Sarai, New Delhi-16.
22. Shri Virander Nath, Secy., Humayunpur Extn. (Arjan Nagar), New Delhi.
23. Shri Desh Raj Dahiya, Dy. Asstt., Adjutant General, Army HQs., New Delhi.
24. Capt. (Dr.) Khazan Chand Bhatta, New Delhi.
25. Shri Onkar Singh, Member, Metropolitan Council & President, Federation of Undeveloped Colonies, New Delhi.
26. Shri Chandermani Bhagat.
27. Shri Kallu, S/o Ghisa, New Delhi.
28. Shri Som Nath, New Delhi.

29. Shri S. C. Varma & Co. (Pvt.) Ltd., New Delhi.

Section 8(a)

30. Shri Raghbir Singh, Advocate, Delhi-6.
31. Shri Shyam Ratan Khandelwal, Delhi-6.
32. Shri M. K. Sharma, New Delhi.
33. Shri Raj Lal, Advocate, Delhi-6.
34. Shri V. G. Ramachandran, M.A. B.L., Member, Official Language Commission, Delhi and Author of Law of Land Acquisition and Compensation.
35. Dr. S. N. Jain, Acting Director, the Indian Law Institute, New Delhi.

Section 8(b)

36. Shri C.S. Chandrasekhara, Fellow and past President, Institute of Town Planners, India, New Delhi.

Section 9

37. Shri S. N. Bhalla, Hony. Director, Farmers' Parliamentary Forum, New Delhi.
38. Shri Amrit Nahata, M.P. (Lok Sabha), 151, South Avenue, New Delhi.
39. Shri Hem Raj, M.P., 77, South Avenue, New Delhi.

XVII. Goa, Daman & Diu

Section 1

1. Shri W. G. Ranadive, Secretary to the Government of Goa, Daman and Diu, Revenue Department.

Section 2

2. Shri G. S. Desai, Under Secretary (CD).

XVIII. Andaman and Nicobar Administration

1. Shri B. C. Achari, Asstt. Secretary to the Chief Commissioner.

XIX. Chandigarh

Section 2

1. Shri S. S. Mongia, Executive Engineer (W&E), for Chief Engineer, Union Territory, Chandigarh.

Section 7

2. Residents of Village Burail (Chandigarh Territory).

XX. Himachal Pradesh

Section 5

1. Shri Jaswant Singh, Land Acquisition Officer, Beas Dam Project, Talwara.

Section 9

2. Deputy Minister (PWD), Himachal Pradesh.

XXI. Pondicherry

Section 1

1. Secretary, Rev. & Dev. Deptt., Government of Pondicherry.

Section 2

2. Shri G. Sundaram, Dev. Secy.-cum-Collector and District Magistrate, Pondicherry.

XXII. Manipur

Section 1

1. Government of Manipur.

Section 2

2. Shri Amar Sinha, Director of Panchayats, Manipur.
3. Shri A. C. Bhattacharjee, Settlement Commissioner, Manipur.
4. Shri M. C. Verma, Collector, Land Acquisition (Addl. Distt. Magistrate), Manipur.
5. Shri L. Mangal Singh, Executive Engineer (Town Planning) Manipur.

Section 3

6. Shri A. Ibopishak Singh, Advocate for and on behalf of the Manipur Bar Association.

XXIII. Tripura

Section 2

1. Shri R. P. Sengupta, Director of Industries, Tripura.
2. Shri S. M. Kanwar, District Magistrate & Collector, Tripura.
3. Registrar, Judicial Commissioner, Court, Tripura.
4. Secretary, P.W.D., Govt. of Tripura.
5. Memorandum submitted by some land-owners of Tripura whose land has been acquired by the Govt. of Tripura.

Central Government

Section 1

1. Department of Agriculture (Shri Godwin Rose, Joint Secretary (Fisheries)).
2. Finance Ministry (Agriculture Division) (Shri Gurdev Saran, Deputy Financial Adviser).
3. Ministry of Steel, Mines and Metals (Department of Mines and Metals).
4. Dr. K. L. Rao, Union Minister for Irrigation and Power.
5. Department of Works and Housing.
6. Ministry of Defence.
7. Ministry of Health.

Section 2

8. Shri R. K. Rath, Deputy Secretary, Department of Agriculture.
9. State Directors of Fisheries.

Section 3

10. Survey of India (Shri M. M. Datta, Colonel, Deputy Surveyor General).

11. Office of the Director General, Posts & Telegraphs, New Delhi.
12. Ministry of Education (National Council for Women's Education).
13. Indian Posts and Telegraphs Department, New Delhi.
14. Department of Light Houses and Light Ships, Calcutta.
15. Director Light Houses and Light Ships, Port Blair.
16. Director of Light Houses and Light Ships, Bombay.
17. Master, Indian Security Press, Nasik Road, Bombay.
18. Department of Industrial Development.
26. Bokaro Steel Ltd., P.O. Bokaro Steel City (Bihar).
27. Heavy Engineering Corporation Ltd., Ranchi.
28. Indian Institute of Technology, Kanpur.
29. Oil and Natural Gas Commission, Dehra Dun.
30. Cement Corporation of India Ltd., New Delhi.
31. General Manager, Security Paper Mill, P.O. Hoshangabad, (M.P.).
32. The Fertilizer Corporation of India Ltd., Naya Nangal (Punjab).
33. Indian Oil Corporation Ltd., New Delhi.
34. Janpath Hotels Ltd., New Delhi.
35. Hindustan Insecticides Ltd., New Delhi.

Section 5

19. Indian Telephone Industries Limited, Bangalore-16.
20. Secretary, Indian Telephone Industries Limited, Bangalore.
21. Mangalore Harbour Project.
22. Hindustan Aeronautics Limited, Bangalore.
23. Bharat Earth Movers Limited, Bangalore.
24. Hindustan Aeronautics Ltd., Kanpur.
25. Hindustan Steel Ltd., Ranchi.

36. The Fertilizer Corporation of India Ltd., New Delhi.

Town Planners

Section 8(a)

1. Sri C. S. Gupte, Chief Planner, Town & Country Planning Organisation, Government of India, Ministry of Health, New Delhi.
2. Shri C. S. Chandrasekhara, Town & Country Planner, Town & Country Planning Organisation, New Delhi.
3. Shri G. D. Mathur, Hony. Secretary, Institute of Town Planners, India, New Delhi.



APPENDIX 7

List of papers dealing with various aspects of the Law of Compulsory Acquisition and of papers giving factual data etc. circulated to the members of the Land Acquisition Review Committee

(A) Constitutional and Legal Background Papers

Sl. No.	No. assigned to the paper	Subject	Sl. No.	No. assigned to the paper	Subject
1	L.A.R.C. 2	Validity of Land Acquisition (Amendment and validation) Act, 1967-Judgment of Supreme Court in <i>Udai Ram Sharma and others v. Union of India</i> together with and introductory note.	12	L.A.R.C. 35	Whether Government should have the right to challenge the Collector's award/order.
2	L.A.R.C. 15	A background paper on Forum & Procedure for Determining Compensation.	13	L.A.R.C. 36	Principles for determining compensation (Constitutional and Legal Background).
3	L.A.R.C. 16	Law of Compulsory Acquisition of Land in : (i) The United States of America. (ii) The United Kingdom; and (iii) The Commonwealth of Australia.	14	L. A. R. C. 40	Definition of 'Land'—whether includes Mines and Minerals.
4	L.A.R.C. 17	Principles which should govern acquisition of land for a public purpose—meaning and scope of the expression public purpose—whether an exhaustive definition of public purpose should be given and whether it should be made justiciable—diversion of land to other public purposes.	15	L.A.R.C. 41	Curtailing delays in Land Acquisition proceedings (Measures suggested and adopted).
5	L.A.R.C. 18	Principles which should govern acquisition of land for companies in the public and private sectors under the Land Acquisition Act, 1894.	16	L.A.R.C. 42	Principles of compensation for the Compulsory Acquisition of Land in the United Kingdom.
6	L.A.R.C. 28	Comparative analysis of State Amendments to Land Acquisition Act, 1894.	(B) Background Papers Giving Factual Data, Views and Suggestions		
7	L.A.R.C. 29	Judicial Review of adequacy of compensation for acquisition of land—background and text of judgement of the Supreme Court in <i>State of Gujarat v/s Shanti Lal Mangaldas and others</i> .	17	L.A.R.C. 11	A paper placed for consideration before the Working Group of Housing and Urban and Rural Planning for the Fourth Five Year Plan.
8	L.A.R.C. 31	Verbatim record of the evidence given by Shri R. S. Gae, Secretary to the Government of India, Ministry of Law (Deptt. of Legal Affairs).	18	L.A.R.C. 19	A paper analysing views and suggestions received by the Committee in regard to "Machinery for determining Compensation".
9	L.A.R.C. 32	Land Commission in U. K.—Constitution, Powers and Functions.	19	L.A.R.C. 20	A paper analysing views and suggestions received by the Committee in regard to land acquisition in the context of developing economy in India.
10	L.A.R.C. 33	Betterment Levy in India and U. K.	20	L.A.R.C. 21	A paper on references made to the Courts for enhancement of compensation and factors responsible for enhancement of awards together with suggestions for improvements.
11	L. A. R. C. 34	Special power for acquisition of land in cases of urgency.	21	L.A.R.C. 22	A paper analysing views and suggestions received by the Committee in regard to the concept of public purpose.
			22	L.A.R.C. 23	Adequacy of Land Acquisition Act in regard to large scale acquisition involving large scale displacement of families.
			23	L.A.R.C. 24	Adequacy of Land Acquisition Act for urban development.
			24	L.A.R.C. 25	A paper analysing views and suggestions received by the Committee in regard to disposal of surplus land.

Sl. No.	No. assigned to the paper	Subject	Sl. No.	No. assigned to the paper	Subject
25	L.A.R.C. 26	A paper analysing views and suggestions received by the Committee in regard to acquisition of land for companies.	29	L.A.R.C. 38	A paper analysing views and suggestions in regard to principles of compensation for acquisition of land in the context of developing economy.
26	L.A.R.C. 27	A paper analysing views and suggestions received by the Committee in regard to acquisition of agricultural land.	30	L.A.R.C. 39	Rehabilitation of families communities displaced by acquisition of land—review of policies and measures adopted.
27	L.A.R.C. 30	A paper analysing views and suggestions received by the Committee in regard to principles and problems for determining compensation.	31	L.A.R.C. 1, 3, 4 to 10, 12 to 14A respectively.	Analysis of views and suggestion made by witnesses in their oral/documentary evidence and of those made in reply to the questionnaire issued by the Committee—Madras/Gujarat/Maharashtra/Andhra Pradesh/Mysore/Kerala/Rajasthan/Haryana/Punjab/Assam/Orissa and West Bengal.
28	L.A.R.C. 37	A paper analysing views and suggestions received by the Committee in regard to analysis of the causes of delay; strategic and tactical measures for dealing with delay and Organisation and staffing.			



APPENDIX 8

List of Places visited by the Land Acquisition Review Committee

	<i>Date of Visit</i>		<i>Date of Visit</i>
Gujarat		Himachal Pradesh	
Ahmedabad . . .	11th & 12th January, 1968.	Simla . . .	8th to 10th September, 1968.
Maharashtra		Uttar Pradesh	
Bombay . . .	14th to 16th January, 1968.	Lucknow . . .	19th to 21st September, 1968.
		Allahabad . . .	23rd and 24th September, 1968
Andhra Pradesh		Madhya Pradesh	
Hyderabad . . .	18th and 19th January, 1968.	Bhopal . . .	7th to 9th October, 1968.
Nagarjunasagar . . .	20th January, 1968.	Indore . . .	10th and 11th October, 1968.
Vijayawada . . .	21st January, 1968.		
Hyderabad & Pochampad . . .	25th/26th October, 1968.	Bihaar	
		Patna . . .	31st October, 1968 and 1st November, 1968.
Mysore		Gaya . . .	2nd November, 1968.
Bangalore . . .	1st & 2nd February, 1968.	Ranchi . . .	3rd November, 1968.
		Bokaro . . .	4th November, 1968.
Tamil Nadu		Tripura	
Madras . . .	3rd & 4th February, 1968.	Agartala . . .	6th December, 1968.
Madurai . . .	5th February, 1968.		
Kanya Kumari . . .	7th February, 1968.	Manipur	
		Imphal . . .	7th & 8th December, 1968.
Kerala		Goa	
Trivandrum . . .	6th to 8th February, 1968.	Panjim . . .	9th to 15th June, 1969.
Rajasthan		Delhi	14th August, 1967—To discuss the procedure to be adopted for working of the Committee.
Jaipur . . .	26th and 27th March, 1968.		14th & 15th September, 1967.
Udaipur . . .	28th and 29th March, 1968.		To finalise the procedure to be adopted for working of the Committee and to consider the draft Questionnaire.
			2nd December, 1967—To finalise the procedure to record evidence of the persons affected by land acquisition at important places in the country.
Punjab			
Chandigarh (Punjab) . . .	23rd & 24th April, 1968.		6th April, 1968 For record-
Nangal . . .	25th April, 1968.		20th April, 1968 ing oral
			4th May, 1968 evidence.
Haryana			23rd & 24th August
Chandigarh (Haryana) . . .	25th and 26th April, 1968.		1968 and 16th
			November, 1968.
Assam			
Shillong . . .	3rd and 4th June, 1968.		
West Bengal			
Calcutta . . .	6th to 10th June, 1968.		
Durgapur . . .	7th June, 1968.		
Farraka . . .	8th June, 1968.		
Orissa			
Bhubaneswar . . .	11th June, 1968.		28th, 30th & 31st For deli-
Cuttack . . .	12th June, 1968.		berating
Puri . . .	13th and 14th June, 1968.		11th to 13th February, on terms
Rourkela . . .	15th June, 1968.		1969, of refe-
			15th to 19th July, re
			1969, and 28th of the
			August, 1969. Committee.

**List of State Ministers, M. Ps., M. L. As. and High Officers of Central and State Governments
who gave Evidence/Furnished Views to the Land Acquisition Review Committee**

State Governments Ministers

1. Shri V. B. Raju, Minister for Revenue (Andhra Pradesh).
2. Shri Chandrasekhar Sinha, Ex-Minister, Irrigation & Power (Bihar).
3. Shri Madhukarrao Chaudhary, Minister for Education & Forests, (Maharashtra).
4. Shri Lal Chand Phardi, Revenue Minister (Himachal Pradesh).
5. Shri D. R. Sankhya, Deputy Minister, Agriculture Development (Himachal Pradesh).

Members of Parliament

Andhra Pradesh

6. Shri J. M. Lobo Prabhu, I.C.S. (Retd.), M.P.
7. Shri Vishwasrai Narasimha Rao, M.P.

Bihar

8. Shri Ram Awatar Sastri, M.P.
9. Shri Sitaram Mishra, M.P.

Haryana

10. Shri Rao Gajraj Singh, M.P.

Kerala

11. Shri K. Chandrasekharan, M.P.

Madhya Pradesh

12. Shri Chaudhary Nitiraj Singh, M.P.

Maharashtra

13. Shri Piloo Mody, M.P.
14. Shri Kunte, M.P.

Mysore

15. Shri N. Shivappa, M.P.

Orissa

16. Shri S. Supakar, M.P.
17. Shri Srinibas Mishra, M.P.

Rajasthan

18. Shri Amrit Nahata, M.P.

Uttar Pradesh

19. Shri M. P. Sherwani, M.P.

West Bengal

20. Shri Satyendra Prasad Roy, M.P.

Delhi

21. Shri Balraj Madhok, M.P.

Himachal Pradesh

22. Shri Hem Raj, M.P.
23. Shri P. C. Verma, M.P.
24. Dr. Salig Ram, M.P.
25. Shri C. L. Verma, M.P.

Members of State Legislatures

Andhra Pradesh

1. Shri Nirmal Ramloo, M.L.A.
2. Shri G. Narayana Reddy, M.L.A.

Bihar

3. Shri Ram Narain, Ex-M.L.A.

Gujarat

4. Shri Kishorsinha Parmar, M.L.A.
5. Venibhai Patel, M.L.A.

Maharashtra

6. Shri Husain Dalwai, M.L.A.
7. Shri A. N. Namjoshi, M.L.A.

Rajasthan

8. Shri Vijaya Singh, M.L.A.
9. Shri Bal Singh, M.L.A.

Uttar Pradesh

10. Shri Prabhakar Tripathi, I.N.T.U.C., Ex-M.L.A.
11. Ch. Naunihal Singh, Ex-M.L.A.
12. Dr. Rajendra Kumar Bajpai, Ex-M.L.A.

West Bengal

13. Shri C. P. Mukherjee, M.L.A.

Goa, Daman and Diu

14. Shrimati Miranda, M.L.A.
15. Shri Gopala Appa Kamat, Speaker, Goa Legislative Assembly.

Himachal Pradesh

16. Shri Inder Singh, M.L.A.
17. Shri Daulat Ram Chauhan, M.L.A.
18. Shri N. L. Verma, M.L.A.
19. Shri Ram Chandra, M.L.A.
20. Shri Ved Bhushan, M.L.A.
21. Dr. Chura Mani, M.L.A.



**Secretaries/Special Secretaries/Joint Secretaries/
Members, Boards of Revenue, State Governments etc.**

CENTRAL GOVERNMENT

1. Shri R. S. Gae, Law Secretary.
2. Shri G. L. Sheth, Special Secretary, Ministry of Defence.
3. Shri Gyan Prakash, Joint Secretary, Ministry of Health.

STATE GOVERNMENTS

Andhra Pradesh

4. Shri Gangopadhaya, Secretary, P.W.D.
5. Shri Pratap Reddy, Joint Secretary (Revenue).

Assam

6. Shri J. N. Dass, Revenue Secretary.
7. Shri P. S. Majumdar, Agriculture Secretary.
8. Secretary (Law).

Bihar

9. Shri Vaidyanathan, Secretary, (Agriculture).

Gujarat

10. Shri A. S. Gill, Revenue Secretary.
11. Shri George Thomas, Additional Chief Secretary and Secretary, Planning.

Kerala

12. Shri R. K. Lakshmanan, Law Secretary.
13. Shri Sankaranarayanan, Revenue Secretary.

Orissa

14. Shri S. K. Bose, Additional Chief Secretary.
15. Shri U. C. Aggarwal, Secretary, Irrigation Power.
16. Shri B. K. Mahant, Revenue Secretary.

Rajasthan

17. Shri S. K. Saxena, Secretary (Industries).

Uttar Pradesh

18. Shri Athar Husain, Revenue Secretary.

West Bengal

19. Shri A. Dassgupta, Special Officer & Secretary, Board of Revenue.

MEMBERS, BOARDS OF REVENUE, STATE GOVERNMENTS

20. Shri P. S. Padmanabhan, First Member, Board of Revenue, Kerala.
21. Shri R. D. Mathur, Member, Board of Revenue, Rajasthan.
22. Shri B. S. Mukherjee, Member, Board of Revenue, Rajasthan.
23. Shri J. D. Shukla, Member, Board of Revenue, Uttar Pradesh.
24. Shri M. Lall, Member, Board of Revenue, Uttar Pradesh.
25. Shri V. S. C. Banerjee, Additional Member, Board of Revenue, West Bengal.

OTHER EXPERTS

26. Shri S. G. Bose Mullick, Vice-President, Delhi Development Authority.
27. Shri B. R. Palta, General Manager, Beas Project Administration, Talwara (Punjab).
28. Shri G. K. Vij, Member, Central Water & Power Commission.
29. Shri M. A. Rehman, Member, Central Water & Power Commission.
30. Shri R. Srinivasan, Commissioner for Land Records & Ex-Officio Revenue Secretary, Mysore.
31. Shri D. M. Venkataramiah, Commissioner for Land Reforms & Ex-Officio, Revenue Secretary, Mysore.
32. Shri R. N. Vasudeva, Divisional Commissioner, Bangalore Division.
33. Shri Swaminathan, Divisional Commissioner, Mysore Division.
34. Shri M. V. Pandit, Divisional Commissioner, Belgaum, Mysore.
35. Sh. R. Ghosh, I.A.S., Commissioner, Burdwan Dn., West Bengal.
36. Shri R. Banerjee, I.A.S., Commissioner, Presidency Division, West Bengal.
37. Shri C. S. Chandrasekharan, Town and Country Planner, Town and Country Planning Organisation, New Delhi.
38. Shri C. S. Gupte, Chief Planner, Town & Country Planning Organisation, New Delhi.
39. Shri V. G. Ramachandran, Member, Indian Law Institute, New Delhi.
40. Shri S. N. Jain, Acting Director, Indian Law Institute, New Delhi.

APPENDIX 10

List of other witnesses who appeared and gave evidence before the Land Acquisition Review Committee

These witnesses have been classified in separate Sections as follows :—

Section 1.—Views/suggestions of the State Governments.

Section 2.—Views/suggestions of Individual Officers.

Section 3.—Views/suggestions of Acquiring Departments.

Section 4.—Views/suggestions of Local Bodies, Improvement Trusts, Panchayats and the like.

Section 5.—Views/suggestions of Public Sector.

Section 6.—Views/suggestions of Private Sector.

Section 7.—Views/suggestions of Landowners.

Section 8(a).—Views/suggestions of Legal Practitioners.

Section 8(b).—Views/suggestions of the Town Planners.

Section 9.—Views/suggestions of Political Parties.

Andhra Pradesh

Hyderabad—18th and 19th January, 1968

1. Shri Dharmaraju—Section 7.
2. Shri Sayajirao—Section 7.
3. Shri D. Seetharamaiah—Section 7.
4. Shri Dali Bandhu—Section 7.
5. Shri K. C. Patnaik—Section 7.
6. Shri B. Venkateswar Rao—Section 7.
7. Shri A. Rangarao—Section 7.
8. Shri G. A. Narasimharao, Chief Engineer, Irrigation—Section 2.
9. Shri Pai, Revenue Secretary—Section 2.
10. Shri V. Rao, Member, Board of Revenue—Section 2.

Nagarjunasagar—20th January, 1968

11. Shri Ranga Reddy, Advocate—Section 9.
12. Shri Tippa Ramakrishna Reddy—Section 9.
13. Shri K. Narayana Reddy, President Panchayat Samithi—Section 9.
14. Shri Hasanuddin Ahmed, Special Collector, Nagarjunasagar—Section 2.
15. Shri Rajendra Rao, Special Deputy Collector, Nagarjunasagar—Section 2.
16. Shri Bajaiah, Special Deputy Collector, Nagarjunasagar—Section 2.
17. Shri Kabir Mohiuddin, Special Deputy Collector, Nagarjunasagar—Section 2.
18. Shri Zahir Hyder, Special Deputy Collector, Nagarjunasagar—Section 2.

Vijayawada—21st January, 1968

19. Shri D. Seshadri Sastry, President, Local Bar Association, Vijayawada—Section 8(a).
20. Shri Katragadda Raghuramaih—Section 7.
21. Shri Ramaraju—Section 7.
22. Shri Seetharamaswamy—Section 7.
23. Shri Nanduri Seetaramamma—Section 7.
24. Shri Gorrepati Venkatasubbaiah, President, Andhra Kisan Sammelan—Section 7.
25. Shri Nallamothu Yosuratnam—Section 7.
26. Shri N. G. Yagananatham—Section 7.
27. Shri Gollapudi Benjamin, Epuri—Section 7.
28. Shri K. Hanumantharao, P.A. to Collector—Section 7.
29. Shri K. V. G. P. Kutumbarao—Section 7.
30. Shri K. Venkateswarlu—Section 7.
31. Shri J. W. Subbaiah—Section 7.
32. Shri S. Satyanarayanarao—Section 7.
33. Shri Adusumalli Kutumbarao—Section 7.
34. Shri Velagapudi Paramdhamaiiah—Section 7.

ASSAM

Shillong—3rd and 4th June, 1968

1. Shri G. C. Sharma, Chief Engineer, P.W.D.—Section 3.
2. Shri M. K. Goswamy, Oil India Ltd.—Section 5.
3. Shri Anil Chaudhary, Deputy Commissioner—Section 2.
4. Shri D. D. Lohia, Merchant Tinsukia—Section 7.
5. Shri V. P. Vohra—Section 7.
6. Shri J. P. Avatramani, Deputy Chief Engineer, Flood Control—Section 3.
7. Shri C. R. Ghoshal, Senior Deputy Manager, O.N.G.C.—Section 5.
8. Shri Dhireswar Kalita and Shri P. C. Hogai—Section 9.
9. Shri Kamaleshwar Barua, Chairman, Gauhati Development Board, Gauhati—Section 4.
10. Shri K. L. Roy, Secretary, Assam Electricity Board—Section 4.
11. Shri P. C. Biswas, Advocate, Shillong—Section 8(a).
12. Shri M. P. P. Chaudhary, Advocate—Section 8(a).
13. Shri B. P. Dutta, Advocate, Shillong—Section 8(a).

Bihar**Patna—31st October, 1968 and 1st November, 1968**

1. Shri Lakshmi Narain Yadav, Advocate—Section 8(a).
2. Shri Ram Babu Singh, Advocate—Section 8(a).
3. Shri Siddheswar Prasad, Advocate—Section 8(a).
4. Shri Arjan—Section 7.
5. Shri B. R. S. Bhatnagar, Pyrites & Chemicals Dev. Ltd.—Section 5.
6. Shrimati Rampyari Devi—Section 7.
7. Shri Rash Behari Lal—Section 7.
8. Shri Mathura Das—Section 7.
9. Shri P. S. Sohay, Advocate—Section 8(a).
10. Shri S. R. Gope, Land-owner—Section 7.
11. Shri B. N. Agarwal, Land-owner—Section 7.
12. Shri T. Prasad, District Dev. Officer—Section 2.
13. Shri Kohli, State Government Officer—Section 2.
14. Shri Thakar Prasad, Panchayat President, Secretary, Bihar Government, Panchayat Parishad—Section 4.
15. Shri Behari Prasad—Section 4.
16. Shri L. Narain Sinha, Director of Rehabilitation—Section 2.
17. Shri Sukhdeo Sharma—Section 7.
18. Shri Maheswar Prasad Narain Sinha—Section 7, 8(a).

Gaya—2nd November, 1968

19. Shri Mohit Kumar Bose—Section 7.
20. Shri J. P. Mehta—Section 7.
21. Shri K. N. Singhal—Section 7.
22. Shri Pandey Krishan Dev Sharma—Section 7.
23. Shri Devnandan Prasad Sinha—Section 7.
24. Shri Shyam Nandan Prasad Sinha—Section 7.
25. Shri Laxmi Prasad Sinha—Section 7.
26. Shri Upendra Nath Verma—Section 7.
27. Shri Kumar Janardan Prasad Singh—Section 7.
28. Shri Narain Singh—Section 7.
29. Shri Alakh Deo Singh—Section 7.
30. Shri Vishnu Deo Prasad—Section 7.
31. Shri K. L. Gupta—Section 7.
32. Shri Subhodh Krishna Mitra—Section 7.
33. Shri D. P. Singh, D. V. C.—Section 5.
34. Shri Pehman, Ex. Engineer, P.W.D.—Section 3.
35. Shri Lala Ambika Sahadeo—Section 7.
36. Shri Raj Kishore Dass—Section 7.
37. Shri Seshdar Mohata—Section 7.
38. Shri Susheel Sandila—Section 7.

Ranchi—3rd November, 1968

39. Shri Shiv Narain, Chairman, Ranchi Municipality—Section 7.
40. Shri Prabodh Narain Tewari—Section 7.
41. Shri Shambhu Prasad, Advocate—Section 8(a).

42. Shri Shiv Narain, Chairman, Ranchi Municipality—Section 4.
43. Shri R. K. Tewari, H.E.C.—Section 3.
44. Shri Sinha, H.E.C.—Section 3.
45. Shri Joshi, N. C. D. C.—Section 3.
46. Shri R. K. Sinha, Representative of P. W. D. Department—Section 2.
47. Shri M. Prasad, Representative of Tribal Department.
48. Shri S. B. Roy—Section 5.
49. Shri S. K. Ghosh—Section 5.
50. Shri R. K. Mishra—Section 5.
51. Shri K. B. Krishnaswami, Representative, Indian Aluminium Co.—Section 5.

Bokaro—4th November, 1968

52. Shri Kali Prasad Singh—Section 9.
53. Shri Narain, Director of Rehabilitation—Section 2.
54. Shri George, General Manager, Bokaro Steel Ltd.—Section 5.
55. Shri Jagbandhu Bhattacharya—Section 7.
56. Shri Ishwar Chandra Mishra, Mukhia, Gram Panchayat, Ranipur—Section 4.
57. Shri Jagdish Prasad, Mukhia, Gram Panchayat, Kandoi—Section 4.

Ranchi

58. Shri Braj Behari Mathur—Section 7.
59. Shri Sehasradha—Section 7.
60. Shri Raj Kishore—Section 7.
61. Shri Shambhu Prasad, Advocate—Section 8(a).

Delhi**6th April, 1968**

1. Shri Om Prakash Agarwal, Director, Delhi Land and Finance—Section 6.
2. Shri K. N. Misra, Civil Engineering Adviser, Cement Corporation of India—Section 6.

20th April, 1968

3. Shri M. L. Khaitan, Federation of Indian Chamber of Commerce and Industry—Section 6.
4. Shri Tyagi—Section 7.

4th May, 1968

5. Shri P. P. Singh—Section 7.
6. Shri Purushotam Chandra—Section 7.
7. Shri Ram Gopal Shisodia—Section 7.
8. Shri B. Das—Section 7.
9. Shri Jehta Nand Sachdev—Section 7.
10. Shri Girdhari Lal—Section 7.
11. Shri K. K. Cuccoria—Section 7.
12. Shri S. N. Bhalla, Farmers' Parliamentary Forum—Section 7.
13. Shri Virendra Kumar—Section 7.
14. Shri C. L. Kohli—Section 7.
15. Lt. Fateh Singh—Section 7.
16. Shri Devi Dayal—Section 7.

Gujarat**Ahmedabad—11th and 12th January, 1968**

1. Shri N. S. Thacker, Ahmedabad Municipal Corporation, Ahmedabad—Section 4.
2. Shri J. P. Gandhi, Ahmedabad Municipal Corporation, Ahmedabad—Section 4.
3. Shri H. M. Shah, The Federation of Gujarat Mills & Industries, Baroda—Section 4.
4. Shri Goverdhan Bhai Patel, President, District Panchayat, Khaira—Section 4.
5. Land owners from Kamalaj Gaon—Section 7.
6. Shri Lal Bhai Ambalal Thacker, Secretary, Green Belt Landholders & Association, Ahmedabad accompanying another man—Section 7.
7. Shri R. R. Marshal, Secretary, Parsi Panchayat Trust—Section 7.
8. Shri Vaghela Varvaji Reva, Sarpanch, Kola-wada, Gandhinagar District—Section 4.
9. Name not clear—Section 7.
10. Shri V. V. Vyas, Secretary, Gujarat Electricity Board, Baroda—Section 5.
11. Shri V. M. Mehta, Swantantra Party—Section 9.
12. Shri Chunibhai Chhotabhai Patel—Section 7.
13. Shri Somabhai Motibhai Patel—Section 7.
14. Shri Baldevbhai Raojibhai Patel—Section 7.
15. Officer of the Oil and Natural Gas Commission—Section 7.
16. Shri Purushotam M. Patel, Anand City—Section 7.
17. Shri Punjabhai Mathura Bhai Patel, Nawagam, Anand City, Section 7.
18. Shri V. J. Desai, Advocate, Ahmedabad—Section 8-A.
19. Mrs. Desai, Ahmedabad—Section 8-A.
20. Shri Pandit, Advocate—Section 8-A.
21. Shri Shahmalbhai Lallubhai Patel representing 32 persons from villages—Section 7.
22. Shri Dhiura, Advocate—Section 7.
23. Gujarat Housing Board—Section 5.

Haryana**Chandigarh—26th April, 1968**

1. Shri Sunder Singh—Section 7.
2. Shri Srichand—Section 7.
3. Shri Sukhdev Prasa, Deputy Secretary (Revenue), Government of Haryana, Chandigarh—Section 1.
4. Shri S. N. Bhanot, Colonisation Officer-cum-Special Land Acquisition Officer—Section 2.
5. Shri Tikka Jagat Singh—Section 7.

Kerala**Trivandrum—6th and 7th February, 1968**

1. Shri K. Madhava Warriar, Advocate—Section 8(a).

2. Planning Secretary—Section 2.

3. Shri Narayanaswamy, Collector, Ernakulam—Section 2.

4. Shri Gopalan—Section 2.

5. P. A. to Collector—Section 2.

6. Shri G. K. Warriar, Premo Pipe Factory—Section 5.

Madhya Pradesh**Bhopal**

1. Shri K. K. Joshi Advocate Section 8(a).
2. Shri N. C. Nehlani Advocate—Section 8(a).
3. Shri Panjwani Advocate—Section 8(a).
4. Shri Anwar Mohammed—Section 7.
5. Shri Mohandas—Section 7.
6. Shri Jalil Ahmed—Section 7.
7. Shri Goverdhandas—Section 7.
8. Smt. M. Ghoshal—Section 7.
9. Shri Jamil Ahmed—Section 7.
10. Shri Faqarddin—Section 7.
11. Shri D. N. Srivastava, Land Acquisition Officer, Bhopal—Section 2.
12. Shri A. S. Kale, Land Acquisition Officer, Multai—Section 2.

Indore

13. Shri Vyas Advocate—Section 8(a).
14. Shri Pathak Advocate—Section 8(a).
15. Shri Machalpure Advocate—Section 8(a).
16. Shri Bagmore Advocate—Section 8(a).
17. Dr. Rishi—Section 7.
18. Dr. Tongia—Section 7.
19. Shri Mittal, Madhya Pradesh State Board of Industries Assn.—Section 5.
20. Shri Mandrekar, All India Manufacturers Association—Section 6.
21. Shri Lal, Commissioner, Indore Division & Collector of Indore Division—Section 2.

Maharashtra**Bombay—14th and 16th January, 1968**

1. Shri V. K. Naik, Legal Adviser—Section 2.
2. Shri M. G. Sainani, Special Land Acquisition Officer—Section 2.
3. An advocate—Section 8(a).
4. Shri S. V. Borkar, Supdtg. Engineer, National High Way Circle, Maharashtra & other Engineers—Section 2.
5. Shri Parelkar, ex-Navy Officer—Section 7.
6. Shri Pandey, Farmer from Aurangabad—Section 7.
7. Shri M. D. Deshmukh, Deputy Secretary, Irrigation and Power Department—Section 2.
8. Shri Thakker—Section 7.
9. Shri Shri Postenji, Sailing & Vessel landlord—Section 7.

10. Shri Umar Hajji—Section 7.
11. Shri Natarajan, Dy. Municipal Commissioner, Greater Bombay Municipal Corporation—Section 4.
12. Shri Nadguada, Superintending Engineer, B. & C. D.—Section 3.
13. Shri J. B. D'Souza, General Manager, B.E.S.T.—Section 5.
14. Shri Razvi, Collector, Bombay—Section 2.
15. Shri Ghate, Chairman, Nagpur Improvement Trust—Section 4.
16. Shri P. R. Bobde, Representative of the Poona Commissioner—Section 2.
17. Shri Madhu Mehta—Section 7.
18. Shri Haji Alm—Section 7.
19. Shri More, Landowner—Section 7.
20. Shri B. T. Talim, Director of Town Planning, Maharashtra State—Section 8(b).
21. Shri A. M. Patil, Assistant Commissioner, Aurangabad Division—Section 2.
22. Shri Savetkar—Section 7.
23. Shri G. K. Gangakhedkar, Deputy Collector, Aurangabad—Section 2.
24. Shri B. M. Ambhalkar, Special Land Acquisition Officer, Pus Project, Pusad—Section 2.
25. Shri G. L. Garge, Under Secretary, Atomic Energy Commission—Section 2.
26. Shri M. P. Dixit, Development Officer, Atomic Energy Commission—Section 2.
27. Shri Sarnaik, Zilla Parishad, Akola—Section 4.
28. Shri Ziper Lananaye Urade, Land-owner—Section 7.

Mysore

Bangalore—1st and 2nd February, 1968

1. Shri Jankiram, representative of Cooperative Societies—Section 6.
2. Shri Shankara Rao, Divisional Commissioner, Gulbarga—Section 2.
3. Shri V. Krishnan, Chairman, Improvement Trust—Section 2.
4. Shri Vazir Ahmed—Section 7.
5. Shri Ganapiiah—Section 7.
6. Shri K. S. Murthy, Commissioner, Bangalore Corporation—Section 4.
7. Shri Balasubramanian, Bangalore Corporation, Section 4.
8. Shri D. Venkanna—Section 8(a).
9. Shri M. Narasingappa—Section 7.
10. Shri K. Chandi—Section 8(a).
11. Shri D. M. Rao, representative Indian Telephone Industries—Section 5.
12. Shri N. C. Sargant, Bishop Church of S. I. Trust Association—Section 7.

Orissa

List of witnesses who gave evidence before the Land Acquisition Review Committee at Bhubaneswar on 11th June, 1968, at Cuttack on 12th June, 1968 and at Puri on 13th June, 1968.

1. Shri B. K. Mishra, Commissioner—Section 2.
2. Collector—Section 2.
3. Shri Madhvanand, Govt. Pleader—Section 8(a).
4. Shri B. K. Tripathi, Land Acquisition Collector—representing Railways—Section 2.
5. Shri Madan Mohan Mohanti, Land Acquisition Officer—Section 2.
6. Shri Mohammed Rafi, Land Acquisition Officer (Pardip)—Section 2.
7. Rajasaheb—Section 7.
8. Shri Rai Bahadur Loknath Mishra, Puri—Section 7.
9. Shri Modi (Collector)—Section 2.
10. Shri S. C. Rautary, Advocate, Puri—Section 8(a).
11. Shri Artubandhu Das, Advocate, Puri—Section 8(a).
12. Shri Sarat Chandra, Advocate—Section 8(a).
13. Shri Moses, Deputy Secretary—Section 2.
14. Shri Mahanti Maharaj (Emar Math, Puri)—Section 7.
15. Shri Gopinath Singh, Retired Deputy Collector—Section 7.
16. Shri C. Mohan Das—Section 7.
17. Shri L. N. Mahapatra—Section 7.
18. Shri Rautroy—Section 7.
19. Shri V. Samantroy—Section 7.
20. Shri B. B. Mishra, Advocate—Section 8(a).

Punjab

Chandigarh—23rd, 24th and 25th April, 1968

1. Sardar Surjit Singh Grewal, State Farmers Forum—Section 5.
2. Shri Gurdit Singh—Section 7.
3. Shri Uttam Singh, Gurdaspur—Section 7.
4. Dr. Sham Lal Narola—Section 7.
5. Sardar Gurbachan Singh—Section 7.
6. Shri K. D. Shori, Land Acquisition Officer—Section 2.
7. Sardar Harbans Singh, Land Acquisition Officer, Chandigarh—Section 2.
8. Sardar Guldip Singh, Land Acquisition Officer, Chandigarh—Section 2.
9. Sardar Ripudaman Singh, Land Acquisition Officer—Section 2.
10. Sardar Amar Singh, Assistant, Land Revenue Branch, Punjab—Section 2.
11. Shri Lal Singh Kang, Acting District Collector, Jullundur—
12. Sardar Phuman Singh—Section 7.
13. Major Chandan Singh—Section 7.
14. Shri Balwant Singh, P.C.S., Land Acquisition Collector, State Electricity Board, Chandigarh—Section 2.
15. Shri Gurudit Singh—Section 7.

Rajasthan

List of witnesses who gave evidence before the Land Acquisition Review Committee at Jaipur on 26th & 27th March, 1968 and at Udaipur on 28th & 29th March, 1968.

1. Shri Sardar Mal Sanghvi, Chairman, Improvement Trust, Jaipur—Section 4.
2. Shri D. S. Srivastava, Secretary, Improvement Trust, Jaipur—Section 4.
3. Shri B. Kambo, Chief Town Planner & Architect, Government of Rajasthan—Section 8(b).
4. Shri R. R. Trivedi, Land Acquisition Officer, Jaisalmer—Section 2.
5. Shri Salodia—Section 7.
6. Shri Phool Chand—Section 7.
7. Shri V. P. Sarma—Section 7.
8. Shri Shargava, Chief Engineer, P.C.S., Jaipur—Section 2.
9. Shri Kurup—Section 2.
10. Shri K. K. Joshi, Development Commissioner, Jaipur—Section 2.
11. Shri Vyas, Land Acquisition Officer, Jaipur—Section 2.
12. Shri M. M. K. Wali, Collector, Jaipur—Section 2.
13. Shri Fateh Lal Padlia—Section 2.
14. Shri Bhavani Sankar—Section 2.
15. Shri Ram Singh, Additional Chief Engineer—Section 2.
16. Shri Radha Kant Sarma, Secretary, Improvement Trust—Section 4.
17. Shri Bala Saheb—Section 2.
18. Shri G. S. Mehta, Retd. Commissioner & Ex-Member, Board of Revenue, Jaipur—Section 2.
19. Shri Bhagwat Singh Bhandari, Bar Association—Section 8(a).
20. Shri Chatur Singh Gudwala—Section 8(a).
21. Shri Jeevan Singh Chordia, Advocate—Section 8(a).
22. Shri Rewat Singh, Swatantra Party—Section 9.
23. Dr. J. S. Rao, Professor, Rural Sociology—Section 8(a).
24. Additional Collector—Section 2.
25. Shri J. N. Purohit, Chairman, Urban Improvement Trust, Jodhpur—Section 4.
26. Shri Balwant Singh Mehta—Section 7.
27. Shri Bherulal Bohra, Sarpanch—Section 4.
28. Shri Harisankar Upadhyay, Agriculturist/Journalist—Section 7.
29. Shri Hukam Raj Mehta, Advocate—Section 8(a).
30. Shri Sukhadev Prasad Maria, Journalist—Section 7.

Tamil Nadu

Madras—3rd and 4th February, 1968

1. Shri R. M. Seshadri, I.C.S. (Retd.) and Advocate, Madras—Section 8(a).
2. Shri Nagesh, representative of Indian Sugar Mills Manufacturers Association—Section 6.

3. Shri T. T. Krishnamoorthi, No. 1, Krishnamachari Road, Nungambakam, Madras-24—Section 7.
4. Shri B. Sivaram, representative of United Planters' Association of South India, Coonoor—Section 6.
5. Shri Ratnasabapathy, a farmer from Gudiyatham, North Arcot District—Section 7.
6. Shri Siva-Subramanian, Revenue Secretary, Tamil Nadu—Section 2.
7. Shri E. Rajamani, Shenoy Nagar—Section 7.
8. Dr. HOV. Handa, 8, Nathamuni Naidu Street, Madras, Joint Secretary, Tamilnad Swatantra Party—Section 9.
9. Dr. M. Santoshan, 30, S. Nagar, Madras-31—Section 7.
10. Shri Srikumar, 8, Prasanna Vinayanya, Madras-7—Section 7.
11. Shri B. S. Kurma, Saidapet, Minerals, Vengaladur—Section 6.
12. Shri G. Susainathan—Section 7.
13. Shri Bhuvaraharurthi, Chairman, State Housing Board, Madras—Section 3.
14. Shri Sundram, Revenue Secretary, Government of Pondicherry—Section 2.
15. Shri Sreekrishna Tiles Pvt. Ltd., Madras—Section 6.
16. Thiru C. V. Ranganatha Sastri, Tondiarpet, Madras—Section 7.
17. Shri P. A. Rangachari, No. 6, Jayalakshmir Colony, Shenoynagar, Madras—Section 7.
18. Shri Rangachari—Section 7.
19. Shri P. Seshayya, Advocate, High Court, Madras—Section 8(a).
20. Shri Chinnaswamy—Section 7.
21. Shri T. Seshaiyah, Advocate—Section 8(a).
22. Shri V. Gangadharam—Section 7.
23. Shri Balasubramaniam, Civil Engineer—Section 2.
24. Shri T. T. Srinivasan—Section 7.
25. Shri M. S. Sivaprakasam—Section 7.
26. Shri S. Pichai, Advocate, Tiruchinapally, Madras—Section 8(a).

Madurai—5th February, 1968

1. Shri T. A. Visvanathan representing Kisans and Peasants—Section 7.
2. Shri Sambhushankar Rao, Agriculturist—Section 7.
3. Shri A. L. Krishna Murthy, Agriculturist—Section 7.
4. Shri J. R. Balagangadharan, Agriculturist—Section 7.
5. Shri A. K. Rama Murthy—Section 7.
6. Shri A. L. Kumaraswamy—Section 7.
7. Shri Savaramath Pillai—Section 7.
8. Shri Rajgopal Naidu—Section 7.
9. Shri Dhanukodi, Secretary, Bar Association—Section 8(a).
10. Shri P. R. Krishna Murthy—Section 7.

Uttar Pradesh**Lucknow—19th & 21st September, 1968**

1. Shri P. N. Srivastava, Chief Engineer, P.W.D., U.P.—Section 3.
2. Shri Ravi Dutt, Chief Engineer Irrigation, U.P.—Section 3.
3. Shri S. Hamid, Housing Commissioner, U.P.—Section 3.
4. Shri Vohra, Officer in L.S. Govt., Department, U.P., Ex. Commissioner, Municipal Corporation, Kanpur—Section 2.
5. Shri Prem Manohar, Deputy Secretary, U.P., Electricity Board—Section 5.
6. Shri Ramakant Bindal, Advocate, Kanpur—Section 8(a).
7. Shri Lalita Prasad Srivastava, Advocate—Section 8(a).
8. Shri Krishan Singh—Section 7.
9. Shri Parmeshwar Das—Section 7.
10. Shri Yazdani—Section 4.
11. Shri Sethuraman—Section 4.
12. Shri Hargovind Dayal—Section 8(a).
13. Shri Kali Krishan Narain—Section 8(a).
14. Shri Bhupendra Nath Srivastava—Section 8(a).
15. Shri Faridul Haq—Section 6.
16. Shri M. Afzalullah—Section 7.
17. Shri Sohan Lal Agarwal—Section 7.
18. Shri R. R. Arora—Section 7.
19. Shri V. N. Sharma—Section 7.
20. Shri K. D. R. Pandey—Section 7.
21. Representatives of Friends Housing Co-op. Society—Section 6.
22. Shri S. D. P. Nigam, O.S.D., Land Acquisition, Irrigation Deptt.—Section 3.

Allahabad—23rd and 24th September, 1968

23. Shri Bhatt, Deputy Chief Engineer, Hydrl, P.W.D.—Section 3.
24. Shri Bishnoi, Land Acquisition Officer—Section 2.
25. Shri B. M. Singh, Deputy Administrator, Nagar Mahapalika, Allahabad—Section 4.
26. Shri B. N. Kansal and others, L.A.O., Nagar Mahapalika, Allahabad—Section 4.
27. Shri Satya Narain Mishra, D.G.C. (Civil), Allahabad—Section 2.
28. Shri R. K. Bhargave, D.M., Mirzapur—Section 2.
29. Shri B. Miller, Triveni Engineering Works, Allahabad—Section 5.
30. Shri Sehat Bhadur & Others—Section 7.
31. Shri Jagdish Lal, Principal, Regional Engineering College, Allahabad—Section 5.
32. Shri Yusuf, Advocate—Section 8(a).
33. Shri A. H. Naqvi, Advocate—Section 8(a).
34. Shri Lokmini Lal, Managing Director, Farrakhabad Cold Storage (P) Limited—Section 6.

35. Shri N. D. Agarwal—Section 6.
36. Smt. Kamla Bahuguna, President, District Congress Committee, Allahabad—Section 9.
37. Shri Tayal—Section 7.
38. Shri Ambika Prasad Chaturvedi, President, Nagar Palika, Orewa (Distt. Etawa)—Section 4.
39. Shri Ram Krishan, Secretary, House Owners Association—Section 6.

West Bengal**Calcutta—8th and 10th June, 1968**

1. Shri S. Roy, Managing Director, Central Fisheries Corporation—Section 5.
2. Shri Krishnamurthi—Section 7.
3. Shri Sen, Board of Revenue, Member—Section 2.
4. Shri D. C. Mukherjee, Collector, Howrah—Section 2.
5. Shri A. P. Chatterjee—Section 7.
6. Shri S. Dutta Mazumdar, Chairman, State Electricity Board—Section 5.
7. Shri M. N. Roychaudhuri D/S. Town & Country Planning—Section 2.
8. Shri B. C. Banerjee (Lawyer)—Section 8(a).
9. Shri Bose }
 } on behalf of the Bar Association—
 } Section 8(a).
10. Shri Dutta }
11. Shri Sen, Director, Land Acquisition, DVC—Section 5.
12. Shri B. B. Ghosh, Calcutta Port Commissioner—Section 5.
13. Shri H. C. Mukherjee, Former Chief Valuer—Section 2.
14. Englishman, Gentleman & Gregory—Section 7.
15. Shri Chakravorty of the C.I. Trust—Section 4.
16. Mr. Mazumdar—Section 7.
17. Deputy Secretary, L. & I&R—Section 2.
18. Mr. Mukherjee (Supreme Court Advocate)—Section 8(a).
19. Shri J. C. Sinha—Section 7.
20. Shri Bireswar Bhattacharya (Paschim Banga Krishak Samity)—Section 7.
21. Bar Association—Section 8(a).
22. Shri B. K. Shah—Section 7.
23. Shri M. K. Mukherjee, Bharat Chamber of Commerce—Section 6.
24. Shri S. C. Naur, Bengal National Chamber of Commerce—Section 6.
25. Mr. Steven—Section 7.
26. Mr. Naun—Section 7.
27. Gentleman—Section 7.
28. Shri Panda—Section 7.
29. Shri Abdullah Rasul—Section 7.
30. Shri Banerjee—Section 7.
31. Shri Syed Mansur Habib—Section 7.

Durgapur—6th June, 1968

32. Shri K. C. Shivaram Krishnan, Chief Executive Officer, Durgapur Development Authority and Chairman, Durgapur Project—Section 5.
33. Shri A. Mando—Section 7.
34. Shri Dalip Chatterjee—Section 7.
35. Shri Majumdar—Section 7.
36. Shri B. S. Chatterjee—Section 7.

Farraka—7th June, 1968

37. Shri Mukherjee, Chief Engineer, Farraka Project—Section 5.
38. Collector (Malda)—Section 2.
39. Collector (Farraka)—Section 2.
40. Shri Sachinder Pande, Murshidabad—Section 7.

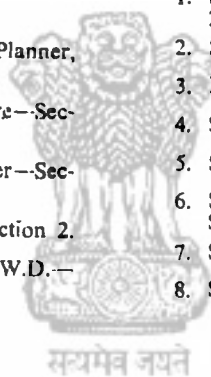
Goa, Daman & Diu**Goa—9th, 10th and 11th June, 1969**

1. Shri W. G. Ranadive, Revenue Secretary, Goa Admn.,—Section 2.
2. Shri D. N. Barua, Collector, Goa—Section 2.
3. Shri L. G. Zhope, L.A.O.—Section 2.
4. Shri P. G. Valasankar, Senior Town Planner, Goa—Section 8(b).
5. Shri Kareporkar, Director of Agriculture—Section 2.
6. Shri Kipgen, Development Commissioner—Section 2.
7. Shri Pooran Singh, Finance Secretary—Section 2.
8. Shri B. R. Naique, Principal Engineer, P.W.D.—Section 3.

9. Shri M. R. Patil, Director of Transport—Section 2.
10. Shri B. Ram, Secy., Industries & Labour—Section 2.
11. Shri Loreto Pinto, Land-owner—Section 9.
12. Shri S. K. Kakodkar, President, Advocates' Association—Section 8(a).
13. Smt. Libya Lobo Sardesai, Vice-President, Advocates' Association of Goa, Daman and Diu—Section 8(a).
14. Shri Shinkre, Landowner—Section 7.
15. Shri K. B. Naik, Goa Admn.'s Officer—Section 2.
16. Shri Fernandes, Landowner—Section 7.
17. Shri Dhakkankar, Landowner—Section 7.
18. Mr. D' Cruz, Landowner—Section 7.
19. Shri Hemiques, Landowner—Section 7.
20. Shri Zito Miranda, Landowner—Section 7.
21. Shri Leo Velho, Landowner—Section 7.

Himachal Pradesh**Simla—9th-11th September, 1968**

1. Secretary, P.W.D., Himachal Pradesh—Section 2.
2. Shri Vaish—Section 7.
3. Deputy Commissioner, Mahasu—Section 2.
4. Shri Goel, Land Acquisition Officer—Section 2.
5. Shri Prem Kumar—Section 7.
6. Shri P. K. Goyal, Revenue Secretary (H.P.)—Section 2.
7. Shri Luxmi Chand, Advocate—Section 8(a).
8. Shri Tara Singh, Advocate—Section 8(a).



APPENDIX 11

Comparative Analysis of State Amendments to Land Acquisition Act, 1894

Guidelines to appendix

(a) This appendix presents a comparative analysis of the provisions of the Land Acquisition Act in force in the various States except the States of Nagaland, and Jammu & Kashmir;

(b) Section numbers and marginal headings of the Central Act have been given on the left hand side of the pages;

(c) Information as to whether the Central provisions are followed or departed from in the States is given on the right hand side of the pages;

(d) Two tables have been appended to this introduction:—

(i) Table I indicates the State Acts by which the Land Acquisition Act, 1894, is amended in respect of the States mentioned therein;

(ii) Table II indicates the Section numbers of the Central Act which have been amended in the various States;

(iii) The foot note to Table II indicates the sections of the Central Act which have not been amended at all by the States.

TABLE I

1. This Table indicates the State Acts by which the Central Land Acquisition Act, 1894, stands amended in respect of the State concerned

Name of the State	State Act by which the Central Act is amended.
1	2
1. Andhra Pradesh	Madras Act 21 of 1948, Madras Act 12 of 1953 and Andhra Pradesh Act 20 of 1959.
2. Bihar	Bihar Act 11 of 1961.
3. Gujarat	Bombay Act 18 of 1938, Bombay Act 20 of 1945, Bombay Act 35 of 1949, Bombay Act 27 of 1950, Bombay Act 35 of 1953, Bombay Act 12 of 1958 and Gujarat Act 20 of 1965.
4. Haryana	Punjab Act 15 of 1948, Punjab Act 2 of 1954, Punjab Act 17 of 1956, Punjab Act 47 of 1956, Punjab Act 17 of 1962 and Haryana Act 8 of 1967.

1	2
5. Madhya Pradesh	C. P. & Berar Act 27 of 1939, C. P. & Berar Act 7 of 1949, C. P. & Berar Act 28 of 1949, Madhya Pradesh Act 5 of 1959 (for Bhopal Area only) and Madhya Pradesh Act 43, of 1965.
6. Madras	Madras Act 21 of 1948 and Madras Act 12 of 1953.
7. Maharashtra	Bombay Act 18 of 1938, Bombay Act 24 of 1945, Bombay Act 35 of 1949, Bombay Act 27 of 1950, Bombay Act 35 of 1953, Bombay Act 8 of 1958, Bombay Act 12 of 1958, Maharashtra Act 38 of 1964 and Maharashtra Act 24 of 1965.
8. Mysore	Mysore Act 17 of 1961 and Mysore Act 10 of 1968.
9. Orissa	Orissa Act 19 of 1959.
10. Punjab	Punjab Act 15 of 1948, Punjab Act 2 of 1954, Punjab Act 17 of 1956, Punjab Act 47 of 1956 and Punjab Act 17 of 1962.
11. Uttar Pradesh	Uttar Pradesh Act 22 of 1954.
12. West Bengal	Bengal Act 2 of 1934, West Bengal Act 30 of 1963 and West Bengal Act 24 of 1964.

NOTE.—All Acts which have been passed after the commencement of the Constitution have received the assent of the President.

II. The legislature of the following States have passed their own Land Acquisition Acts after the constitution came into force:

1 Kerala	The Kerala Land Acquisition Act, 1961 (Act 21 of 1962 as amended by Kerala Act 4 of 1966) and the Kerala Land Acquisition (Amendment and Validation) Act, 1968 (29 of 1968).
2. Nagaland	The Nagaland Land (Requisition and Acquisition) Act, 1965 (Act 3 of 1965).
3. Rajasthan	The Rajasthan Land Acquisition Act, 1953 (Act 24 of 1953) as amended by Rajasthan Act 27 of 1957, Rajasthan Act 10 of 1959, Rajasthan Act 15 of 1960, Rajasthan Act 40 of 1960 and Rajasthan Act 22 of 1966.

TABLE II

The following provisions of the Land Acquisition Act, 1894 have been amended by the States in their application to the respective States

Section amended	New Sections added	Names of States which have amended the provisions or added new provisions or deleted the provisions
1	2	3
Section 3		
..	'arable land'	Gujarat, Maharashtra, Mysore.
'person interested'	..	Kerala, West Bengal.
'Collector'	..	Bihar, Kerala, Mysore, Maharashtra, Rajasthan.
'Court'	..	Gujarat, Kerala, Maharashtra, Mysore, Rajasthan, West Bengal.
..	'Cooperative society'	Mysore.
'Company'	..	Andhra Pradesh, Kerala, Madras, Madhya Pradesh, Mysore, Rajasthan.
'Appropriate Government'	..	Assam, Madhya Pradesh, Rajasthan, Uttar Pradesh.
'Public Purpose'	..	Bihar, Gujarat, Kerala, Madras, Maharashtra, Mysore, Rajasthan, Uttar Pradesh.
'Persons entitled to act'	..	Kerala, Rajasthan.
..	'Prescribed'	Mysore.
..	'Local authority'	Mysore, Rajasthan.
..	'Land Reforms Commissioner'	Uttar Pradesh.
..	3(1—A)	Maharashtra.
..	3—A } 3—B }	Gujarat, Maharashtra.
..	3-C	Gujarat.
4	..	Bihar, Gujarat, Kerala, Maharashtra, Mysore, Rajasthan, Uttar Pradesh.
5	..	Mysore, Rajasthan.
5-A	..	Bihar, Kerala, Maharashtra, Mysore, Rajasthan, Uttar Pradesh.
6	..	Bihar, Kerala, Maharashtra, Mysore.
7	..	Kerala, Maharashtra, Rajasthan.
8	..	Gujarat, Mysore, Rajasthan.
9	..	Gujarat, Kerala, Mysore, Rajasthan.
10	..	Mysore.
11	..	Gujarat, Maharashtra, Mysore, Rajasthan.
..	11-A	Gujarat, Rajasthan.
..	16 } 17 }	Kerala.

1	2	3
12	..	Gujarat, Haryana, Maharashtra, Mysore, Punjab, Uttar Pradesh.
..	12-A	Bihar, Gujarat, Haryana, Maharashtra, Mysore, Punjab, Rajasthan, Uttar Pradesh.
..	15-A	Gujarat, Maharashtra, Mysore.
16	..	- Kerala, Mysore.
17	..	Andhra Pradesh, Bihar, Gujarat, Haryana, Kerala, Madhya Pradesh, Madras, Maharashtra, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh.
..	17-A	Gujarat.
18	..	Andhra Pradesh, Gujarat, Haryana, Madhya Pradesh, Maharashtra, Mysore, Punjab, Rajasthan, Uttar Pradesh.
19	..	Mysore, Rajasthan.
20	..	Mysore, Rajasthan.
..	22-A	Rajasthan.
23	..	Bihar, Kerala, (Projects), Gujarat, Madhya Pradesh (Bhopal), Rajasthan, Uttar Pradesh, West Bengal.
24	..	Mysore, Rajasthan.
..	24-A	Rajasthan.
25	..	Haryana, Punjab, Rajasthan, Uttar Pradesh.
26	..	Mysore.
27	..	Kerala.
28	..	Andhra Pradesh, Gujarat, Kerala, Madhya Pradesh, Madras, Maharashtra, Mysore, Punjab, Rajasthan.
30	..	Kerala.
..	30-A	Mysore.
31	..	Kerala, Rajasthan.
..	32-A	West Bengal.
34	..	Andhra Pradesh, Gujarat, Kerala, Madhya Pradesh, Madras, Maharashtra, Mysore, Punjab, Rajasthan.
35	..	Bihar, Gujarat, Kerala, Maharashtra, Mysore, Rajasthan.
36	..	Kerala.
..	36-A	Rajasthan.
37	..	Rajasthan.
..	37-A	Mysore, Rajasthan.
38	..	Bihar, Rajasthan.
38-A	..	Madhya Pradesh, Rajasthan.
39	..	Gujarat, Uttar Pradesh.
40	..	Gujarat, Kerala.

1	2	3
41	..	Gujarat, Kerala.
43	..	Kerala, Rajasthan.
44	..	Kerala, Rajasthan.
45	..	Andhra Pradesh, Gujarat, Maharashtra, Mysore, Rajasthan..
46	..	Gujarat, Maharashtra, Mysore, Rajasthan.
47	..	Gujarat, Kerala, Rajasthan.
..	47-A	Gujarat.
48	..	Maharashtra.
..	48-A 48-B	Rajasthan.
49	..	Rajasthan.
..	49-A	Gujarat.
50	..	Gujarat, Mysore, Rajasthan.
..	52-A	Gujarat, Haryana, Maharashtra, Punjab.
54	..	Mysore.
55	..	Kerala.
..	46 47 47-A 48 54 58	Kerala.

NOTE.—The following sections of the Central Act have not been amended by any of the State Acts:

13, 14, 15, 21, 22, 29, 32, 33, 42, 51, 52, 53.

PART I
PRELIMINARY

Section 3—Definitions (a) land

The Central definition is followed in all* State Land Acquisition Acts.

(aa) arable land

The Central Act does not define this expression. In the Maharashtra Act¹ this expression is defined to mean land fit for cultivation, whether in fact cultivated or not, and includes garden land; whereas in the Gujarat², Mysore³ and Rajasthan⁴ Acts this expression is defined to include 'garden land'.

(b) 'person interested'

1. The Central definition is followed in all* State Land Acquisition Acts except in the Kerala and West Bengal Acts.

2. In the Kerala Act, this expression also includes those persons who are 'entitled to claim' an interest in compensation.

3. In the West Bengal⁵ Act, the following words are added at the end of this expression:

"or cultivates the land or any portion of it as a bargardar."

Explanation—A bargardar is a person who under the system generally known as *adhi*, *barga* or *bhag* cultivates the land of another person on condition of delivering a share of the produce of such land to that person⁶.

(c) 'Collector'

1. The Central definition is followed in the Land Acquisition Acts of Andhra Pradesh, Assam, Gujarat, Haryana, Madhya Pradesh, Madras, Orissa, Punjab, Uttar Pradesh and West Bengal.

2. In the Bihar Act, this expression also includes an Additional Collector and Additional Deputy Commissioner.

(NOTE.—However, the Collector has no power to perform the functions under sections 4, 5A, 6, 35 and 38 respectively)⁷.

3. In the Kerala Act, this expression does not include a Deputy Commissioner⁸.

4. In the Mysore Act, the expression 'Deputy Commissioner' is defined (and not the Collector) identically with the definition of the Collector in the Central Act, and also includes an Assistant Commissioner in-charge of a sub-division of a district.⁹

5. In the Maharashtra Act, this expression also includes any officer specially appointed by the Commissioner¹⁰.

(NOTE.—In the Maharashtra Act, by virtue of S. 52A the Collector is empowered to delegate any of his powers and functions under this Act, subject to the general or special orders of the Government, to any officer not below the rank of a Mamlatdar or to a Land Acquisition Officer specially appointed by the Government.

6. In the Rajasthan Act, this expression also includes an Additional Collector appointed to a district.

*Does not include State of Nagaland.

¹Substituted by S. 2 of the Maharashtra Act, 1965.

²Inserted by S. 2 of the Bombay Act XXVII of 1950.

³Inserted by S. 6 of the Mysore Act 17 of 1961.

⁴Added by S. 9 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

⁵Added by S. 3 of the Land Acquisition (West Bengal Amendment) Act, 1963.

⁶Substituted by S. 3 of the Land Acquisition (Bihar Amendment) Act, 1966.

⁷Substituted by S. 6 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

⁸Inserted by Schedule to the Land Acquisition (Bombay Amendment) Act, 1958 (XIII of 1958).

(ff) Court

1. The Central definition is followed in Land Acquisition Acts of Andhra Pradesh, Assam, Bihar, Haryana, Madhya Pradesh, Madras, Orissa, Punjab and Uttar Pradesh.

2. In the *Gujarat and Maharashtra Acts* this expression also includes the *Court of a Civil Judge (Senior Division) to which the principal Civil Court may transfer any such proceedings*.*

(NOTE.—This expression does not include Collector even though his order under S. 18 is subject to revision by the High Court as if the Collector were a court subordinate to the High Court).

3. In the *Kerala Act*, the expression means a *Land Acquisition Court established or any Civil Court invested with the jurisdiction of a Land Acquisition Court under Section 58*."

NOTE.—Section 58 of the Kerala Land Acquisition Act, runs as follows:—

1. The Government may, by notification in the Gazette, establish Land Acquisition Courts at any place or places in the State of Kerala.

2. When a Land Acquisition Court has been established under sub-section (1), a Judicial Officer not below the rank of a Subordinate Judge shall be appointed as Judge of the Court by notification in the Gazette.

3. The local limits of the jurisdiction of the Land Acquisition Courts and the pecuniary limits of the jurisdiction of such Courts shall be such as the Government may, by notification in the Gazette, fix.

4. Notwithstanding anything contained in sub-sections (1), (2) and (3), the Government may, by notification in the Gazette, invest any Civil Court not lower in rank to that of a Subordinate Judge's Court with the jurisdiction of a Land Acquisition Court, subject to such territorial and pecuniary limits of jurisdiction as may be specified in the notification.

4. In the *Mysore and Rajasthan Acts*, this expression means a principal Civil Court of original jurisdiction, and includes any other Civil Court empowered by the State Government by notification in the official Gazette, to perform the functions of the Court under this Act, within the pecuniary and local limits of its jurisdiction."

NOTE.—The Rajasthan Land Acquisition Act, 1953 provides only for the local limits of the jurisdiction of such courts and not for the pecuniary jurisdiction.

5. In the *West Bengal Act*, the expression means a principal Civil Court of original jurisdiction, and includes the Court of any Additional Judge, Subordinate Judge or Munsif whom the Provincial Government may appoint, by name or by virtue of his office, to perform, concurrently with any such principal Civil Court, all or any of the functions of the Court under this Act, within any specified local limits and in the case of a Munsif, upto the limits of the pecuniary jurisdiction with which he is vested under Section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887.

(dd) Cooperative Society

This expression is not defined in the Central Act. Only the *Mysore Act* has defined it as under:

'a registered Society within the meaning of the Cooperative Societies Act, 1912 (Central Act II of 1912), or any society registered or deemed to be registered under any law corresponding to that Act for the time being in force in any part of India.'

(e) Company

1. The Central definition is followed in all* State Land Acquisition Acts except in the Andhra Pradesh, Kerala, Madhya Pradesh and Mysore Acts.

NOTE.—In the *Rajasthan Act*, this expression is worded slightly different and includes a company registered in Rajasthan.

*Added by S. 2 (i) of the Land Acquisition (Bombay Amendment) Act, 1953.

**Substituted by S. 6 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

*Does not include State of Nagaland.

2. In the *Andhra Pradesh Act*, this expression also includes a Company or society registered or incorporated by or under any corresponding law in force in the transferred territories¹¹.

3. In the *Kerala Act*, this expression is defined to mean "a Company as defined in Section 3 of the Companies Act, 1956 (Central Act 1 of 1956) and includes a foreign company within the meaning of section 591 of that Act, a society registered under the Societies Registration Act, 1860 (Central Act 21 of 1860) as in force in the Malabar district referred to in Sub-section (2) of Section 5 of the State Re-organisation Act, 1956 or under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act XII of 1955) and a registered society within the meaning of the Cooperative Societies Act for the time being in force."¹²

4. In the *Madhya Pradesh Act*, this expression also includes a registered society within the meaning of clause (b) of Section 2 of the Madhya Pradesh Societies Registration Act, 1959 (1 of 1960) and a society within the meaning of clause (Z) of Section 2 of the Madhya Pradesh Cooperative Societies Act, 1960 (17 of 1961).¹³

5. In the *Mysore Act*¹⁴, this expression is defined as follows:—

- (i) a Company formed and registered under the Companies Act, 1956 (Central Act I of 1956);
- (ii) a Company formed and registered under any previous Company Law for the time being in force in any part of India other than the State of Jammu and Kashmir;
- (iii) a Company formed and registered under any law for the time being in force in the State of Jammu & Kashmir;
- (iv) a Company—
 - (a) incorporated under any law relating to companies for the time being in force in any foreign country, and
 - (b) having its principal place of business in India.
- (v) a Company incorporated by an Indian law relating to a particular company;
- (vi) a cooperative society;
- (vii) a society registered under the Societies Registration Act, 1860 (Central Act XVI of 1860) or under any law corresponding to that Act for the time being in force in any part of India; and
- (viii) a corporation created by or under any law for the time being in force in any part in India not being a corporation owned or controlled by the State;

(cc) 'Appropriate Government'

The Central definition is followed in the Land Acquisition Acts of Andhra Pradesh, Bihar, Gujarat, Haryana, Kerala, Madras, Maharashtra, Mysore, Orissa, Punjab and West Bengal.

NOTE.—In the *Maharashtra* and *Gujarat Acts*, the State Govt. is empowered under S. 52A(2) to delegate its powers under the Act, except power to make rules to any officer subordinate to it not below the rank of Collector.

This expression is not defined in the Land Acquisition Acts of Assam, Madhya Pradesh, Rajasthan and Uttar Pradesh.

(ccc) 'prescribed'

This expression is not defined in the Central Act. Only the Land Acquisition Act of Mysore State has defined it as¹⁵

"prescribed by rules made under this Act."

¹¹Added by S. 5 of the Andhra Pradesh Act, No. XX of 1959.

¹²S. 2(4) of the Kerala Land Acquisition Act, 1961.

¹³Substituted by S. 2 of the Land Acquisition (M. P. Amendment) Act, 1965.

¹⁴Substituted by S. 6 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

¹⁵*Ibid.*

(f) 'public purpose'

1. The Central definition is followed in the Land Acquisition Acts of Andhra Pradesh, Assam, Haryana, Madhya Pradesh, Orissa, Punjab and West Bengal.

2. This definition is not provided in the *Kerala Act*.

3. In the Bihar and Uttar Pradesh Acts, the expression includes: provision for or in connection with—

- (i) sanitary improvements of any kind including reclamation; and
- (ii) the laying out of village sites or townships, or the extension, planned development or improvement of existing village sites or townships.¹⁶
- (iii) the settlement of land for agriculture with the weaker section of the people.

NOTE.—Clause (iii) is provided in the U.P. Act only.

4. In the *Gujarat* and *Maharashtra Acts*, this expression also includes:

the acquisition of land for purpose of the development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment or sale with the object of securing further development.¹⁷

5. In the *Rajasthan Act*, this expression also includes:

"planned development of lands from public funds and subsequent disposal thereof in whole or in part by lease or sale or in such other manner as may be directed by the Government with the object of securing further development as planned".

6. In the *Gujarat*¹⁸, *Rajasthan*¹⁹, *Madras*²⁰ and *Maharashtra*²¹ Acts, the expression further includes:

"any housing scheme which the State Government may from time to time undertake for the purpose of increasing accommodation for housing persons and shall include any such scheme undertaken from time to time with the previous sanction of the State Government by a local authority or a company".

7. In the *Mysore Act*²², this expression includes—

- (i) the provision of village sites;
- (ii) the provision of land for planned development from public funds and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;
- (iii) the provision of land for town or rural planning under any law relating to such planning;
- (iv) the provision of land,—
 - (a) for carrying out any housing scheme or health scheme sponsored by the Central Government or any State Government or a local authority; or
 - (b) for clearing slum areas; or
 - (c) for relieving congestion; or

¹⁶. Substituted by S. 3 of the Land Acquisition (Bihar Amendment) Act, 1960, and, Schedule (para. 1) to the Land Acquisition (U.P. Amendment) Act, 1954.

¹⁷. Inserted by S. 2(2) (2) of the Land Acquisition (Bombay Amendment) Act, 1953.

¹⁸. Added by S. 4 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

¹⁹. S. 3 of the Rajasthan Housing Schemes (Land Acquisition) Act, 1960.

²⁰. *Vide* S. 2 of the Land Acquisition (Madras Amendment) Act, 1961.

NOTE.—This Act was held unconstitutional by the Supreme Court in *Vajravelu v. Spl. Dy. Collector*.

²¹. *Vide* S. 3 (1)(a) of the Land Acquisition (Bombay Amendment) Act, 1948.

²². Substituted by S. 6(7) of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

- (d) for housing poor, landless, or displaced persons or persons residing in areas affected by floods;
- (v) the provision of,—
 - (a) residence for any person holding an office of profit under the Central Government or a State Government, or accredited as a diplomatic consular or trade representative of a foreign Government;
 - (b) building for locating a public office;
- (vi) the provision of land for corporations owned or controlled by the State, or other nationalised industries or concerns;
- (vii) the provision of land for any local authority and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development;
- (viii) the provision of land for a company,—
 - (a) where the land is needed for the construction of some work and such work is likely to prove substantially useful to the public, or
 - (b) where the land is needed by a building cooperative society or corporation for the construction of houses;
- (ix) the provision of land for any charitable trust.

Explanation.—"Charitable trust" includes a trust established or to be established for the relief of the poor, education, medical relief or advancement of any other object of general public utility;"

8. In the *Nagaland Act*,^{11b} this expression is not defined; however, it provides for the speedy acquisition of land specifically for the following purposes only:

- (a) public works;
- (b) other development measures; and
- (c) for maintaining supplies and services essential to the life of the community or providing proper facilities for accommodation, transport, communication, irrigation, flood control and anti-erosion measures including embankment and drainage or for providing land individually or in groups to landless, flood affected or displaced persons, or to a society registered under any law for the time being in force, or a company incorporated under any law for the time being in force, formed for the benefit and rehabilitation of landless, flood affected or displaced persons.

(g) persons entitled to act

The Central definition is followed in all* State Land Acquisition Acts except in the Kerala and Rajasthan Acts. In the *Kerala* and *Rajasthan Acts*, the following words are not provided:—

"a married woman, in cases to which the English Law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were married and of full age."

(h) Local authority

The definition of this expression is provided only in the Land Acquisition Acts of *Mysore*¹² and *Rajasthan*. The expression is defined to include a town planning authority and a city improvement trust board.

(i) Land Reforms Commissioner

This expression is defined only in the *Uttar Pradesh Act* and means:

"the Land Reforms Commissioner appointed by the State Government"¹³.

^{11b}. Section 9(1) read with section 3(1) of the Nagaland Land (Requisition and Acquisition) Act, 1965.

* Does not include State of Nagaland.

¹². Inserted by S. 6 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

¹³. Added by schd. (para 1) to the Land Acquisition (U. P. Amendment) Act, 1954.

ANNEXURE

In the *Maharashtra Act*²⁴ the new section 3(1A) has provided as follows:

The powers conferred on the Commissioner by or under this Act, shall be the powers exercisable by him

in relation to the acquisition of land for those purposes only for which the State Government is the appropriate Government.



²⁴. Inserted by Schedule to the Land Acquisition (Bombay Amendment) Act, 1958, (Act 8 of 1958).

PART II
ACQUISITION

Section 4.—Preliminary Investigation

Publication of preliminary notification and powers of officers thereupon.

1. The Central provision is followed in the Land Acquisition Acts of Andhra Pradesh, Assam, Haryana, Madhya Pradesh, Madras, Orissa, Punjab, and West Bengal.

2. The Collector (in the States of Bihar¹, Kerala² and Uttar Pradesh³)/the Commissioner (in the State of Maharashtra⁴)/the Deputy Commissioner (in the State of Mysore⁵) is also empowered, besides the appropriate Government, to issue section 4 notification and to authorise any officer to carry out the survey in the manner provided under sub-section (2) of Section 4.

But in the Rajasthan⁶ Act publication of notification is dispensed with. Instead the State Government, whenever it considers necessary or expedient to acquire land needed or likely to be needed for a public purpose, is required to publish order requiring any officer subordinate to it to make survey and the Collector is required on receipt of such survey-report⁷ to give a notice of the proposed acquisition of land to the head of the acquiring Government department and to all interested persons and to give a public notice of it at convenient places on or near about the land proposed to be acquired.

3. In the Gujarat Act⁸ it is further provided that Section 4 notification may be published where land is needed (or is likely to be needed) for a company also.

4. In the Bihar Act⁹, it is further provided that Section 4 notification should be published at the office of the Collector, at the office of the sub-divisional officer, at the office of the smallest revenue administrative unit and Gram Panchayat, if any constituted under the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948) and at some conspicuous place in the village in which the land is situated.

5. In the Bihar¹⁰ and Mysore¹¹ Acts the Collector is required to cause a copy of notification to be served on all persons known or believed to be interested in the land.

6. In the Mysore Act¹², it is required that Section 4 notification should also describe the land by its survey number if any, its boundaries and its approximate area; and three new sub-sections 1-A, 3 and 4 have been added as follows:—

(1-A) The notification shall also specify the date (such date not being less than thirty days from the date of publication of the notification) on or before which and the manner in which objections to the proposed acquisition may be made, under Section 5-A.

¹. Substituted by S. 4 of the Land Acquisition (Bihar Amendment) Act, 1960.

². Section 3 of the Kerala Land Acquisition Act, 1961 (which corresponds to S. 4 of the Central Act).

³. Inserted by Schedule to the Land Acquisition (Bombay Amendment) Act, 1958 (VIII of 1958).

⁴. Inserted by S. 7 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

⁵. Added by Schedule (Para. 2) to the Land Acquisition (Uttar Pradesh Amendment) Act, 1954.

⁶. Substituted by S. 2 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

⁷. The Land Acquisition Acts of Gujarat & Maharashtra make provisions for making preliminary survey which are given in Annexure-I.

⁸. Inserted by S. 7 of the Land Acquisition (Gujarat Unification & Amendment) Act, 1963 (Gujarat Act No. XX of 1963).

⁹. Substituted by S. 4 of the Land Acquisition (Bihar Amendment) Act, 1960.

¹⁰. *Ibid.*

¹¹. Added by S. 7 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961. It is further provided that the 'Deputy Commissioner' may serve a copy of section 4 notification on the owner or the occupier where the owner is not the occupier.

¹². *Ibid.*

(3) Where the acquisition is for a company, an officer of such company may be authorised by the appropriate Government or the Deputy Commissioner to exercise the power conferred by sub-section (2).

(4) The Officer authorised under sub-section (2) or sub-section (3) shall complete his investigation and submit his report to the Deputy Commissioner within a period of three months (or within such longer period not exceeding six months in all as the Deputy Commissioner may allow), from the date of the publication of the notification under sub-section (1) and the Deputy Commissioner shall forward the report with his remarks to the appropriate Government along with his report under sub-section (2) of Section 5-A.

7. In the *Gujarat Act*¹², it is further provided that the authorised officer under Section 4(2) can also 'measure the land likely to be needed'.

8. In the *Rajasthan Act*¹³, it is further provided that the officer can be authorised under section 4(2) "to inquire and ascertain the particulars of the persons interested in such land".

The following are the additional provisions made in S. 4 of the *Rajasthan Act*:

Sub. S. (2).—A copy of the order made under sub-section (1) shall also be endorsed to the Collector of the district in which such locality is situated with direction to take suitable action upon receipt of the report under sub-section (4).

Sub. S. (3).—The officer-making an entry under sub-section (1) shall, at the time of such entry, pay or tender payment for all necessary damages to be done to the land entered upon or into and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute for the decision of the Collector, and such decision shall be final.

Sub. S. (4).—Such office shall send to the Collector a report on the result of the survey as to the other operations described in or carried on under sub-section (1), as to the enquiries made thereunder and as to the particular land in that locality which may be acquired for the public purpose.

Sub. S. (5).—The Collector shall, upon receipt of such report, cause to be given:—

- (i) to the head of the Government department at whose instance the order under sub-section (1) shall have been made and to all persons reported under clause (g) of sub-section (1) to be interested in the land proposed thereby to be acquired as being suitable for the public purpose, a notice in the prescribed form of the proposed acquisition, and
- (ii) a public notice to the like effect at convenient places on or near about the land proposed to be acquired.

PRELIMINARY SURVEY

The Land Acquisition Act as in force in Maharashtra and Gujarat States provides for the making of preliminary survey before the issue of notification under section 4.

The provisions regarding preliminary survey as applicable to Maharashtra and Gujarat States are as follows:—

Maharashtra

Extracts of Sections 3A and 3B of the Land Acquisition Act as in force in Maharashtra. (These sections were inserted by Bombay Act 20 of 1945).

3A. *Preliminary survey of lands and powers of officers to carry out survey.*—For the purpose of enabling the (State) Govt. (or the Commissioner) to determine

whether land in any locality is needed or is likely to be needed for any public purpose, it shall be lawful for any officer of the (State) Govt. in the Public Works Department, or any other officer either generally or specially authorised by the (State) Govt. in this behalf (or, as the case may be, any officer authorised by the Commissioner), and for his servants and workmen,

- (i) to enter upon and survey and take levels of any land in such locality,
- (ii) to mark such levels.
- (iii) to do all other acts necessary to ascertain whether the land is adapted for such purpose, and
- (iv) where otherwise the survey cannot be completed and the levels taken, to cut down and clear away any part of any standing crop, fence or jungle:

¹². Substituted by Section 7 of the Land Acquisition (Gujarat Unification and Amendment) Act; 1963 (Gujarat Act No XX of 1965).

¹³. Inserted by Section 2 of the Rajasthan Land Acquisition (Amendment Validation) Act, 1966.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

3B. Payment for damage.—The officer of the (State) Govt. in the Public Works Department, and any other officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

Gujarat

Extracts of Sections 3A, 3B and 3C of the Land Acquisition Act as in force in the State of Gujarat after the Land Acquisition (Gujarat Unification and Amendment) Act, 1963 (Gujarat Act No. 20 of 1965).

3A. Preliminary survey of lands and powers of officers to carry out survey.—For the purpose of enabling the (State) Govt. to determine whether land in any locality is needed or is likely to be needed for any public purpose, it shall be lawful for any officer of the (State) Govt. in the Public Works Department, or any other officer either generally or specially authorised by the (State) Govt. in this behalf, and for his servants and workmen,

- (i) to enter upon and survey and take levels of any land in such locality,
- (ii) to dig or bore into the subsoil,

- (iii) to do all other acts necessary to ascertain whether the land is adapted for such purpose,
- (iv) to set out the boundaries of the land likely to be needed and the intended line of the work (if any) likely to be done thereon,
- (v) to mark such levels, boundaries and line by placing marks and cutting trenches,
- (vi) to measure the land so likely to be needed, and
- (vii) where otherwise the survey cannot be completed and the levels taken or the boundaries or lines marked, to cut down and clear away any part of any standing crop, fence or jungle;

3B. Payment for damage.—The officer of the (State) Govt. in the Public Works Department, and any other officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

3C. Measurement of land comprising Survey number or sub-division.—In the case of the whole of a survey number or sub-division of a survey number, as defined in the Bombay Land Revenue Code, 1879 (Bombay Act V of 1879) as in force in the Bombay area, the Saurashtra area or, as the case may be, the Kutch area of the State of Gujarat, the area of such survey number or, as the case may be, sub-division as entered in the land records shall be deemed to be the measurement of the land comprising such survey number or sub-division".

Section 5 Payment for damage.

1. The Central provision is followed in all* State Land Acquisition Acts except in the Mysore and Rajasthan Acts.
2. In the *Rajasthan Act*, the dispute is required to be referred for the decision of the Collector only.
3. In the *Mysore Act*¹, the damages have to be paid by the officer authorised to do certain acts under sub-section (3) of Section 4 also.

Objections

Section 5A Hearing of objections

1. The Central provision is followed in all* State Land Acquisition Acts except in the Bihar, Kerala, Maharashtra, Mysore, Rajasthan and Uttar Pradesh Acts.
2. In the *Maharashtra Act*¹, the Commissioner is also empowered to exercise the powers of the Government under the section.
3. In the *Kerala Act*, the words 'or for a company' are not provided in the section and the Board of Revenue is also empowered to exercise the powers of the Government under the Section.
4. In the *Rajasthan Act*², sub-section (1) is amended as underlined below:

"Any person interested in any land in respect of which a notice has been given under sub-section (5) of Section (4), as being proposed to be acquired for a public purpose or for a company may, within thirty days after the service of the public notice in the manner provided in Section 45 (of the State Act), object to the acquisition of the land or of any land in the locality, as the case may be".

*Does not include State of Nagaland.

¹ Section 4(3) of the Rajasthan Land Acquisition Act, 1953, as modified by S. 2 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

² Added by S. 8 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

¹ Inserted by Schedule to the Land Acquisition (Bombay Amendment) Act, 1958 (Act 8 of 1958).

² Substituted by s.3 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

5. In the *Bihar Act*, in sub-section (1), the period of thirty days starts after the publication of notification under sub-section (1) of Section 4 at some conspicuous place in the village in which the land is situated or of the service of the copy on the interested person, whichever is later¹, and the substituted sub-section (2) provides as follows:—

“(2) (i) Every objection under sub-section (1) shall be made in writing to the Collector who shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and making such further enquiry, if any, as he thinks necessary, decide the objection:—

Provided that the appropriate Government may, either of its own motion or on the application of any person interested in the land, call for the record of the proceedings held by the Collector and pass such order as it may think fit.

(ii) The order of the appropriate Government and subject to such order, the decision of the Collector under clause (i) shall be final².

6. In the *Mysore Act*³, in sub-section (1) the interested person is required to file his objections ‘on or before the date specified in the notification under sub-section (1) of Section 4’ in this behalf⁴, which is not to be less than thirty days, vide Section 4(1-A), (and not within thirty days after the issue of the notification under Section 4, as provided in the Central Act).

Further in sub-section (2) the interested person is required to file his objections in writing setting out the grounds thereof (under the Central provision, the setting out of grounds is not provided) and the Deputy Commissioner is required to submit the case for the decision of the appropriate Government after hearing of objections and inquiry (if any) “before the expiry of six weeks from the last date for filing objections or before the expiry of two weeks from the date on which he receives the report under sub-section (4) of Section 4, whichever is later”⁵—(No such time limit is provided under the Central provision).

Provided that the appropriate Government may, if it is satisfied that there was sufficient cause for the delay, condone any delay in the submission of the report by a period not exceeding one year.”

Furthermore, the Deputy Commissioner is required to communicate to the objectors the fact of having submitted the report to the appropriate Government.

7. In the *U.P. Act*⁶, in sub-section (1), the period of ‘thirty days’ for objecting to the acquisition is reduced to ‘twenty-one days’.

Declaration of intended Acquisition

Section 6

Declaration that land is required for a public purpose

1. The Central provision is followed in all⁷ State Land Acquisition Acts¹ except in Bihar, Kerala, Maharashtra and Mysore Acts.

2. In the *Maharashtra Act*, it is further provided that the power of appropriate Government under the Section can also be exercised by the Commissioner² and an Explanation³ to sub-section (1) is added as follows:—

“Where compensation to be awarded for such property is paid or to be paid out of any money provided by the State Government to a company, being a Corporation owned or controlled by the State, whether provided as loan, grant or otherwise howsoever, for the purpose of payment of the whole or part of the compensation, such compensation shall be deemed to be compensation paid or to be paid out of public revenues.”

¹. Substituted by s. 5 of the Land Acquisition (Bihar Amendment) Act, 1960.

². *Ibid.*

³. Substituted by s. 9 of the Land Acquisition (Mysore Extension & Amendment) Act, 1961.

⁴. Under sub-section (4) of Section 4, of the State Act, the officer is to submit his investigation report under s. 4 to the Deputy Commissioner, within a period of three months (or within such longer period not exceeding six months in all as the Deputy Commissioner may allow) from the date of the publication of the notification under sub-section (1) of section 4.

⁵. Substituted by schedule (para. 3) to the Land Acquisition (Uttar Pradesh Amendment) Act, 1964.

⁶Does not include State of Nagaland.

⁷. In the Rajasthan Act, the provision of S. 6 (4) pertains to Section 7 and 8 of the Central Act and are dealt in their respective places for the purposes of States' analysis of Land Acquisition provisions.

¹. Inserted by Sch. to the Land Acquisition (Bombay Amendment) Act, 1958 (Act 8 of 1958).

². Added by Section 3 of the Land Acquisition (Maharashtra Amendment) Act, 1965.

3. In the *Bihar Act*⁴, under Section 6(1) both the Government and the Collector can make a declaration that land is needed for a public purpose or for a company; and under S. 6(3) the Collector is also empowered to acquire the land in accordance with the manner provided by the State Land Acquisition Act. Further in proviso to sub-section (1) for the words 'public revenues', the words 'Consolidated Fund of State', are used.

4. In the *Kerala Act*⁵, both the Government and the Board of Revenue are authorised to make a declaration under S. 6(1) where land is needed for a public purpose only (and the words 'or for a company' are omitted). Further, it is provided that no declaration can be made after the expiry of two years from the date of the Publication of the notification; and that if no declaration is made within the period of two years, the notification shall be deemed to have been cancelled. A new sub-section (3) is provided in the Kerala Act by Act 29 of 1968 which reads as follows:—

'where no declaration under this section is made in respect of the land covered by a notification under sub-section (1) of Section 3 or any portion of such land, within the period specified in the proviso sub-section (1) of this section, such notification, or as the case may be, such notification in so far as it relates to the portion of the land in respect of which no declaration is made, shall be deemed to have been cancelled on the expiry of the said period'.

However, the following provisions of Section 6 of the Central Act are not provided in the Kerala Land Acquisition Act:—

- (i) The proviso to sub-section (1) whereby "no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority", and
- (ii) Sub-section (3) which provides that "the said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing."

5. (a) The *Mysore Act* has omitted the words 'irrespective of whether one report or different reports has or have been made (wherever required) under Section 5A, sub-section (2)', from sub-section (1), and added a new sub-section (1-A) Providing that on the direction of the Government "the Deputy Commissioner shall within two months from the date on which he receives the directions:

- (a) cause the land (unless it has been already marked out under Section 4) to be marked out;
- (b) also cause it to be measured; and, if no plan has been made therefor, a plan to be made of the same; and
- (c) report to the appropriate Government the result of his operations under this sub-section."

NOTE.—Under sub-section (1) of the State Act, the declaration is made by the appropriate Government, whereas under the Central provision it is made either under the signature of a Secretary to the Government or of some officer duly authorised to certify its orders.

— (b) The second proviso to S. 6(I) of the Central Act is not provided by the *Mysore Act*. The new Explanation added to first proviso provided as follows:—

"In computing the period of three years specified in this sub-section, any period during which any action or proceeding to be taken in pursuance of the notification issued under sub-section (1) of Section 4 is held up on account of stay or injunction by order of a Court shall be excluded."

(c) Under the amended sub-section 2 every declaration of the Government is required to state the precise boundaries and survey number, if any, of the land also, and the place where plan of the land may be inspected."

⁴ Substituted by Section 6 of the Land Acquisition (Bihar Amendment) Act, 1960.

⁵ Inserted by S. 2 of the Kerala Land Acquisition (Amendment) Act, 1966.

⁶ By Section 2 of the Land Acquisition (Mysore Amendment & Validation) Act, 1957.

⁷ Inserted by S. 10 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

⁸ Added by Section 2 of the Land Acquisition (Mysore Amendment & Validation) Act, 1967.

⁹ Inserted by Section 10 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

Section 7

After declaration Collector to take order for acquisition

1. The Central provision is followed in all *State Land Acquisition Acts except in the Kerala, Maharashtra and Rajasthan Acts.

2. In the *Kerala Act*, the words 'or for a Company' are omitted and in addition to the 'Government', the 'Board of Revenue' can also direct the Collector to take order for the acquisition of the land.

3. In the *Maharashtra Act*, in addition to the 'appropriate Government', the 'Commissioner' can also direct the Collector to take order for the acquisition of the land.

4. In the *Rajasthan Act*, the Collector is required to take order for the acquisition of the land declared to be needed for a public purpose or for a Company.

Section 8

Land to be marked out measured and planned

1. The Central provision is followed in all *State Land Acquisition Acts except in the Gujarat, Mysore and Rajasthan Acts.

2. In the *Gujarat Act*, the Collector is required to cause the land to be measured only when it has not already been measured under Section 3A or 4 or deemed to be measured under Section 3C.

3. In the *Rajasthan Act*, the Collector is required only to cause a plan of such land to be prepared if no such plan shall have been already prepared under Section 4 (of that Act).

4. In the *Mysore Act*, this section has been omitted as its provisions have been included in Section 6(1-A).

Section 9

Notice to persons interested.

1. The Central provision is followed in all *State Land Acquisition Acts except in the Gujarat, Kerala, Mysore and Rajasthan Acts.

2. In the *Gujarat Act*, under sub-section (2) persons interested are permitted to state objections to the measurements according to Section 3C or made under Section 3A, 4 or 8 also.

3. In the *Kerala Act*, the following new sub-section (5) is added:—

"The notice shall also be published in the Gazette and shall be deemed to be sufficient notice to all persons interested in the land as between the Government and such persons."

4. In the *Mysore Act*, under sub-section (2) all persons interested should be required to state also the basis on which the compensation so claimed is computed and such other matters as may be prescribed and the statement of such persons is required to be made in writing in the prescribed form and has to be signed by the party or his agent.

Further, the following words are added to sub-section 3 at the end:—

'such notice shall be served at least fifteen days before the date on which the persons concerned have to appear and state their respective interests before the Deputy Commissioner'.

5. In the *Rajasthan Act*, in sub-section (2) the period of 'fifteen days' starts after the date of service of the notice (and not after the date of publication of the notice as provided in the Central provisions).

*Does not include State of Nagaland.

¹. Inserted by Schedule to the Bombay Act No. 8 of 1958.

². Section 6(4)(i) as substituted by Section 4 of the Rajasthan Land Acquisition (Amendment & Validation) Act, 1966.

³. Substituted by Section 8 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

⁴. Section 6(4) (ii) of the Rajasthan Land Acquisition Act, 1953 as substituted by Section 4 of the Rajasthan Amendment Act, 1966.

⁵. Omitted by S. 11 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

⁶. Substituted by Section 9 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

⁷. Substituted by Section 12 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

⁸. Substituted by Section 6 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

Section 10

Power to require and enforce the making of Statements as to names and interests.

The Central provision is followed in all *State Land Acquisition Acts.

Enquiry into Measurements, Value and Claims and Award by the Collector

Section 11

Enquiry and award by Collector.

1. The Central provision is followed in all *State Land Acquisition Acts except in the Gujarat, Maharashtra, Mysore and Rajasthan Acts.

NOTE.—In the Kerala Act, additional provisions have been made in Sections 16 and 17 which have bearing on Section 11 (see below). Further, section 48 provides for the amendment of Section 11 in its application to 'Projects' (see Section 48).

2. In the *Rajasthan Act*, the section is materially changed as underlined below:—

- (1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements of the land and into the value of the land *at the date of the publication of the declaration under Section 6 sub-section (1)^f*, and into the respective interests of the persons claiming the compensation and shall, *except for reasons beyond his control, make an award within a period of three months^g commencing from the time fixed under sub-section (2) of Section 9 under his hand if—*

- (i) the true area of the land ;
 - (ii) the compensation which in his opinion should be allowed for the land ;
 - (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land of whom, or of whose claims, he has information, whether or not they have respectively appeared before him ; and
 - (iv) the costs which, in his opinion, should be allowed to any person who is found to be entitled to compensation and who is not entitled to receive the additional sum of ten per centum mentioned in sub-section (2) of Section 23, as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.
- (2) The Collector may disallow, wholly or in part, costs incurred by any person if he considers that the claim made by such person for compensation is extravagant.

NOTE.—For the purposes of 'housing scheme' the section is amended requiring the Collector to enquire into the value of the land at the relevant date (*i.e.* December 12, 1953) also in making the award.

Further a new Section 11-A is added (see annexures).

3. In the *Gujarat*^a and *Mysore*^b Acts, the following two provisos have been added to the section:

- (1) "Provided that no award shall be made by the Collector under this section without the previous approval of the State Government or of such superior officer as the State Government may authorise in this behalf:

Provided further that it shall be competent to the State Government to direct that the Collector or such class of officers specially appointed by the State Government to perform the functions

*Does not include State of Nagaland.

¹. Substituted by s. 7 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

². *Ibid.*

^a. Added by s. 10 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

^b. Added by s. 14 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

of a Collector under this Act may make such award without such approval in such class of cases as the State Government may specify in this behalf."

NOTE.—The above first proviso is provided to Section (11) of the *Mysore Land Acquisition Act*, with the following additions at the end:

"who, in the case of an award made by an officer below the rank of the Deputy Commissioner of a District, may be the Deputy Commissioner of the District."

Further in the *Gujarat Act*¹, three new sub-sections have been inserted after sub-section (1) as follows:—

- (2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appear before him are agreeable to the award which he proposes to make under this section, the Collector may without making further enquiry, require such persons to execute an agreement in the form prescribed by the State Government and make an award according to the terms of such agreement.
- (3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.
- (4) Notwithstanding anything contained in the Indian Registration Act, 1908 no agreement made under sub-section (2) shall be liable to registration under that Act."

4. In the Maharashtra Act, the following provisions have been added to the section:—

"Provided that no award allowing compensation exceeding such amount as the State Government may by general order specify shall be made by the Collector without the previous approval of the State Government or such officer as the State Government may appoint in this behalf². Save that the power of such approval shall be exercisable by the Commissioner in lieu of the State Government where an award not exceeding one lakh of rupees is made to fix compensation under the provisions of the Bombay Taluqdari Tenure Abolition Act, 1949 (Bom. LXII of 1949); the Bombay Personal Inams Abolition Act, 1952 (Bom. XLII of 1953); the Bombay Merged Territories (Baroda Mulgiras Tenure Abolition) Act, 1953 (Bom. XLV of 1953); the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953 (Bom. XXXIX of 1954) and the Bombay Merged Territories Miscellaneous Allienations Abolition Act, 1955 (Bom. XXII of 1955)."

ANNEXURE I

Section 11A—Sums payable to Government to be specified in award

In the *Gujarat Act*³, Section 11-A provides as follows:—

If the land in respect of which an award is made under Section 11 is land which according to the terms of its tenure is not transferable or partible

by metes and bounds without the sanction of the State Government or any other competent Officer, then out of the amount of compensation awarded therefor a sum, which would have been payable to the State Government under any law for the time being in force, had the land been otherwise transferred, shall be payable to the State Government and the Collector shall specify in the award the sum so payable to the State Government."

¹. Added by s. 1 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

². Added by s. 3 of the Land Acquisition (Bombay Amendment) Act, 1953, and 2 of the Land Acquisition (Bombay Amendment) Act, 1958. (No. of XII of 1958).

NOTE.—The Bombay Act 4 of 1948 has provided in section 11 that the Collector should in making the award take into consideration the value of land at the relevant date also (i.e., 1st January, 1948) but the Supreme Court held the Act unconstitutional and still born in N.B. Jeebhoy's case (1965 (1 SCR 636). Therefore, this addition in the Maharashtra Act can be ignored.

³. Added by schedule to the Land Acquisition (Bombay Amendment) Act, 1952 (No. VIII of 1958).

⁴. Inserted by s. 11 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

ANNEXURE II

In the Kerala Act, new Sections 16 and 17 provide as follows:—

16. *Award in case of agreement as to the amount of compensation.*—(1) If the Collector and all the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

(2) Such award shall be filed in the Collector's office and shall be conclusive evidence, as between the Government and all persons interested, of the value of the land and the amount of compensation allowed for the same.

17. *Valuation statement to be approved by superior authority.*—No award shall be made by the Collector under Section 11 or Section 16 unless the valuation statement prepared in such manner as may be prescribed by rules is approved,—

(i) where the collector making the award is not the District Collector, by the District Collector; and

(ii) where the Collector making the award is the District Collector, by the Board of Revenue.

ANNEXURE III

Section 11-A—Government department or company to be informed of and represented at the inquiry under Section 11

In the Rajasthan Act¹, Section 11-A provides as follows:—

"A notice of the day fixed for an inquiry under Section 11 shall also be given to, and served on, the department at whose instance, or the company for which, proceedings for acquisition shall have been started under this Act and it shall be the duty of a representative of such department or company, as the case may be, to be present during the course of the inquiry and to assist the Collector in the completion of the inquiry so that the making of the final award may be expedited.

Provided that nothing in this section shall preclude the Collector from proceeding with the inquiry if such representative fails to appear before him."

Section 12

Award of Collector when to be final.

1. The Central provision is followed in all *State Land Acquisition Acts except in the Gujarat, Haryana, Maharashtra, Mysore, Punjab and Uttar Pradesh Acts.

2. Further a new Section 12A is inserted in the Bihar, Gujarat, Haryana, Maharashtra, Mysore, Punjab, Rajasthan and Uttar Pradesh Acts (see Annexure).

3. In the Haryana² and Punjab³ Act, in sub-section (2), the Collector is required to give notice of his award to the State Government also.

In the Uttar Pradesh Act⁴, in sub-section (2), the Collector is required to send a copy of the award to the Land Reforms Commissioner also.

4. In the Gujarat⁵, Maharashtra⁶ and Mysore Acts⁷, in sub-section (1), it is provided that the award of the Collector shall be final and conclusive evidence subject to the provisions of Section 15A and, in sub-section (2), it is provided that the immediate notice of the award or the amendment thereof made under Section 12-A should be given to the persons interested.

ANNEXURE

Section 12-A—Amendment and correction of Award

1. Section 12A of the Gujarat¹, Maharashtra² and Mysore³ Acts runs as follows:—

(1) Any clerical or arithmetical mistake in an award or errors arising therein from accidental slips or omission may, at any time not later than six months from the date of the award, be corrected by the Collector either on his own motion or on the

application of a person interested and the award so corrected shall be deemed to have been amended accordingly.

(2) If the award so amended discloses any over-payment, the Collector shall, either immediately after the amendment of the award or after the expiry of the time allowed to make a reference to the Court from the amendment of the award, issue a notice to a person to whom over-payment was made that if the amount overpaid is not paid

¹. Inserted by s. 8 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

*Does not include State of Nagaland.

². Added by s.2 of the Land Acquisition (Punjab Amendment) Act, 1962. The giving of this notice to the State Government is not required where the acquisition of land is for the purposes of the Union.

³. *Ibid.*

⁴. Added by Schedule (Para 4) to the Land Acquisition (U.P. Amendment) Act, 1954.

⁵. Added by Section 4(1) of the Land Acquisition (Bombay Amendment) Act, 1953.

⁶. Substituted by Section 15 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

⁷. Inserted by Section 5 of the Land Acquisition (Bombay Amendment) Act, 1953.

⁸. *Ibid.*

⁹. Inserted by Section 16 of the Land Acquisition (Mysore Extension & Amendment) Act, 1961.

back to the State Government within one month after receipt of the notice, the amount overpaid shall be recovered as an arrear of land revenue and after the expiry of the time stated in the notice the amount shall be so recoverable.

2. Section 12-A of the *Punjab and Haryana*¹, Acts runs as follows:—

- (1) The Collector may, at any time but not later than six months from the date of award, or, where a reference is required to be made under Section 18, before the making of such reference, correct any clerical or arithmetical mistakes in the award either of his own motion or on the application of any person interested.
- (2) The Collector shall give immediate notice of any correction made in the award to all persons interested and, where the acquisition of land is not for the purpose of the Union, also to the State Government.
- (3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), such person shall be liable to refund the excess, and if he defaults or refuses to pay, the same may be realized as an arrear of land revenue.

This provision is followed in the *U.P. Act*² except that it has not provided in sub-section (2) for giving the notice of correction made in the award to the State Government.

This provision is substantially followed in the *Bihar Act*³, except that in sub-section (3) it has provided for giving an opportunity of being heard to the person found liable to refund the excess amount received by him.

3. Section 12-A of the *Rajasthan Act* runs as follows:—

Clerical or arithmetical mistakes in the award may, at anytime not later than six months from the date of the award, be corrected by the Collector either on his own initiative or on the application of the parties. If the amendment of the award discloses any overpayment, the Collector shall issue a notice to the person to whom overpayment was wrongly made either immediately after the amendment of the award or after expiry of the time allowed to make a reference to the Court against the amendment of the award; that if the amount over-paid is not credited to Government within a month after receipt of the notice, such amount shall be recovered as arrears of land revenue.

Section 13
Adjournment of Enquiry

The Central provision is followed in all *State Land Acquisition Acts.

Section 14

Power to summon and enforce attendance of witnesses and production of documents.

The Central provision is followed in all *State Land Acquisition Acts.

Section 15

Matters to be considered and neglected.

The Central provision is followed in all *State Land Acquisition Acts.

However, in the *Gujarat*⁴, *Maharashtra*⁵, and *Mysore*⁶, Acts a new Section 15A is inserted which runs as follows:—

'The State Government may, at any time before an award is made by the Collector under Section 11, call for and examine the record of any order passed by the Collector or of any inquiry or proceedings of the Collector, for the purpose of satisfying itself as to the legality or propriety of any order passed and as to the regularity of such proceedings. If, in any case, it shall appear to the State Government that any order or proceedings so called for should be modified, annulled or reversed, it may pass such orders thereon as it deems fit.'

Taking possession

Section 16

Power to take possession.

The Central provision is followed in all* State Land Acquisition Acts except in the Kerala and Mysore Acts.

1. In the *Kerala Act*⁷, it is also provided that when the Collector makes an award under S. 16 (i.e., if the Collector and all the persons agree as to the amount of compensation) he may take possession of the Land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

¹. Inserted by s. 3 of the Land Acquisition (Punjab Amendment) Act, 1962.

². Inserted by Sch. (Para. 5) of the Land Acquisition (U. P. Amendment) Act 1954.

³. Inserted by s. 8 of the Land Acquisition (Bihar Amendment) Act 1960.

*Does not include State of Nagaland.

⁴. Inserted by s.6 of the Land Acquisition(Bombay Amendment) Act, 1953 (No. XXXV of 1953).

⁵. *Ibid.*

⁶. Inserted by s. 17 of the Land Acquisition (Mysore Extension & Amendment) Act, 1961.

⁷. S. 18 of the Kerala Land Acquisition Act, 1961.

2. In the *Mysore Act*¹, the new sub-section (2) provides as follows:—

"The fact of such taking possession may be notified by the Deputy Commissioner in the official Gazette, and such notification shall be evidence of such fact".

Section 17

Special powers in cases of urgency.

(a) *How these provisions are invoked ?*

Under the Central Act and the Acts of Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal the Collector or the Deputy Commissioner, as the case may be, can take possession on the direction of the appropriate Government.

In addition to the appropriate Government, the Commissioner in the *Maharashtra Act* and the District Collector in the *Kerala Act*² are also empowered to give such a direction to the Collector. In the *Kerala Act*³, the Government and the District Collector are required "to record the reasons in writing for giving such a direction to the Collector."

(b) *Kinds of land which possession can be taken :*

The Central Act and the Acts of Andhra Pradesh, Assam, Bihar, Haryana, Madhya Pradesh (for purposes other than rehabilitation of displaced persons), Madras, Maharashtra, Mysore, Punjab, Rajasthan, Uttar Pradesh (for purposes other than sanitary improvements or planned development) and West Bengal provide for taking possession of any waste or arable land, whereas the Acts of Gujarat⁴, Kerala⁵, Madhya Pradesh⁶ (for the purpose of rehabilitation of displaced persons only), Orissa⁷ and Uttar Pradesh⁸ (for the purposes of sanitary improvements or planned development only) provide for taking possession of any land.

The Acts of Andhra Pradesh⁹, Haryana¹⁰, Madras¹¹, Mysore¹², Punjab¹³ and Rajasthan¹⁴ further provide that the provisions of section 17(1) would apply to 'any waste or arable land' notwithstanding the existence thereon of scattered trees or temporary structures such as huts, pandals or sheds; whereas the *Bihar Act*¹⁵ provides for the application of the provision notwithstanding the existence of forest, orchard or trees on such an arable or waste land. The *Rajasthan Act*¹⁶ has defined the expression 'arable land' to include 'garden land'. (See also S. 3 for the definition of 'arable land' given in the Acts of other States).

In the *Maharashtra Act*^{17a}, it is specifically provided that for taking possession of land under this provision it would not be necessary to state separately which lands are waste and which are arable.

¹. Added by S. 18 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

². S. 19(1) of the Kerala Land Acquisition Act, 1961.

³. By S. 12 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

⁴. Section 3 and schd. (Para 2) of the C. P. & Berar Act XX of 1959.

⁵. By S. 3 of the Land Acquisition (Orissa Amendment and Validation) Act, 1959.

⁶. By S. 2 and Schedule (Para 6) of the Land Acquisition (U.P. Amendment) Act, 1954.

⁷. Inserted by Madras Act XXI of 1948.

⁸. Inserted by S. 2 of the Land Acquisition (Punjab Amendment) Act, 1953.

⁹. Inserted by Madras Act XXI of 1948.

¹⁰. Inserted by S. 19 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

¹¹. Inserted by S. 2 of the Land Acquisition (Punjab Amendment) Act, 1953.

¹². Added by S. 9 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

¹³. Inserted by Sec. 9 of the Land Acquisition (Bihar Amendment) Act, 1960.

¹⁴. Added by S. 9 of the Rajasthan Land Acquisition (Amendment and Validation), Act, 1966.

^{17a}. Inserted by S. 4 of the Land Acquisition Maharashtra Amendment Act, 1965.

Section 17—*contd.*(c) *Purposes for which provisions can be invoked.*

Under the Central Act and the acts of all* States except Kerala, the provisions can be invoked when the land is needed for *public purposes or for a company*; whereas under the *Kerala Act*, it can be done only for 'a public purpose'. However, the *Uttar Pradesh Act*¹ provides for taking possession of any land for the purposes of *sanitary improvements of any kind or planned development* also, and the *Rajasthan Act* provides for taking possession of any waste or arable land in the case of any area which the District Magistrate has certified to be unhealthy.

(d) *Limitation of time*(i) *for taking possession*

Under the Central Act and all State Acts except the Bihar Act, the Collector can take possession of the land, even though no award has been made therefor, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1), i.e., at convenient places on or near the land to be taken stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him; whereas under the Bihar Act², such a possession can be taken only on the expiration of fifteen days from the publication of the declaration mentioned in Sec. 6 or with the consent in writing of the person interested, at any time after the publication of the notification under Section 4 in the village in which land is situated.

(ii) *for serving notice*

Only the *Kerala Act* and *Madhya Pradesh Act*³ (for the purpose of rehabilitation of displaced persons only) require that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least three days (in the *Kerala Act*)/fortyeight hours' (in the *Madhya Pradesh Act*) notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(e) *Interim payment of compensation*

Only the *Kerala Act* provides for the interim payment of compensation for the land of which possession is taken under the section. Section 19(3) of the *Kerala Act* runs as follows:—

"In every case under sub-section (1), the Collector may, on a request in writing by all the parties interested and on furnishing sufficient security, after such summary enquiry as he may think fit to institute and after satisfying himself that the parties are lawfully entitled to receive the compensation, pay a sum not exceeding fifty per cent of the probable compensation that may be finally awarded in respect of such acquisition, provided that no payment shall be made where there is a dispute as regards the person entitled to the compensation. The advance compensation paid under this sub-section shall be adjusted towards the final compensation payable under the award."

(f) *Payment of immediate compensation for standing crops and trees and for any other damage caused by sudden dispossession. (Sub-section 3)*

Under the Central Act and all State Acts the Collector is required at the time of taking possession under Section 17(1) and (2) to offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24 (and also not excepted in Section 24A under the *Rajasthan Act*); and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage is required to be allowed in awarding compensation for the land.

*Does not include State of Nagaland.

¹. Inserted by S. 2 and Schd. (Para 6) of the Land Acqn. (U.P. Amendment) Act, 1954.

². By S. 9 of the Land Acquisition (Bihar Amendment) Act, 1960.

³. Proviso inserted by S. 3 and schedule (Para 2) of the C.P. and Berar Act XX of 1949.

(g) *Hearing of objections when to be dispensed with.* (Sub-section 4)

...The Central Act and all State Acts provide that when the appropriate Government is of the opinion that the provisions of Section 17(1) and (2) are applicable, the provisions of Section 5A would not apply if the appropriate Government so directs (or in the *Bihar Act*¹ only, where possession of the land has been taken with the consent of the person interested), and, if it so directs, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4, sub-section (1).

Emergency Provisions (Section 17(2), (3) and (4))

Under the Central Act and all* State Acts except the *Kerala Act*, the Collector can, immediately after the publication of the notice mentioned in Section 9(1) (in the *Bihar Act*¹ after the publication of the declaration mentioned in Section 6, or, with the consent in writing of the person interested, given in the presence of headman of the village or *Mukhiya* and *Sarpanch*, at any time after the publication of the notification under Section 4 in the village in which the land is situated) and with the previous sanction of the appropriate Government (in the *Maharashtra Act*² with the previous sanction of the Commissioner also), enter upon and take possession of any land in the cases stated below. Thereupon the land would stand vested absolutely in the Government free from all encumbrances.

The *Kerala Act* does not contain emergency provisions.

Cases in which land can be entered upon and its possession taken

Under the Central Act and all* State Acts the Collector can enter upon and take possession of the land when "owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration (in the *Bihar Act*¹, it is only for any Railway Administration other than the Railway Administration of the Union) to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station".

Some of the State Acts have extended the application of emergency provisions to other cases also. They are as follows:—

(a) *In the Bihar Act*¹

"Whenever it becomes necessary for the purpose of protecting life or property from flood, erosion or other natural calamities or for the maintenance of communication other than Railway communication."

(b) *In the Gujarat³, Maharashtra⁴, Mysore⁴ and Rajasthan Acts.*

"Whenever owing to a like emergency or owing to breaches or other unforeseen events causing damage to roads, rivers, channels or tanks, it becomes necessary for the State Government (or the Commissioner, in the *Maharashtra Act*) to acquire the immediate possession of any land for the purpose of maintaining road communication or irrigation or water supply service, as the case may be."

¹. Inserted by S. 9 of the Land Acquisition (Bihar Amendment) Act, 1960.

*Does not include State of Nagaland.

². Inserted by Schedule to Bombay Act 8 of 1958.

³. Inserted by S. 7 of the Land Acquisition (Bombay Amendment) Act, 1953.

⁴. Inserted by S. 19 of the Land Acquisition (Mysore Amendment) Act, 1961.

(c) In the *Andhra Pradesh¹*
Haryana, Punjab² and
Madras³ Acts.

In the *Haryana* and *Punjab*
Acts only.

(d) In the *Madhya Pradesh³*
Act.

"Whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land—

- (i) for the purpose of any library or educational institution, or
- (ii) for the construction, extension or improvement of any building or other structure in any village for the common use of the inhabitants of such village, or any godown for any society registered or deemed to be registered under the *respective* cooperative societies Acts, or
- any dwelling house for the poor, or
- any irrigation tank, irrigation or drainage channel or any well, or any road, or
- (iii) for the construction of labour colonies under a Government sponsored Housing Scheme or houses for any other class of people, or
- (iv) whenever land is required for a public purpose which in the opinion of the appropriate Government is of urgent importance.

"Whenever owing to a like emergency it becomes necessary for the Provincial Government to acquire the immediate possession of any land for the purpose of maintaining traffic over a public road."

ANNEXURE

1. In the *Gujarat Act⁴*, the new Section 17-A has provided as follows:

When any land vests in the State Government or in a corporation owned or controlled by the State Government under the provisions of this Act, it shall be lawful, with the previous sanction of the State Government, to use such land also for any public purpose other than that for which its possession was taken.

2. In the *Rajasthan Act*, the new Section 17-A has provided as follows:

When any land is acquired for the purpose of a local authority, the Collector shall, in every case refer-

red to in Section 16 or Section 17, make over charge of the land, upon payment of the cost of acquisition, to that authority, and the land shall thereupon vest in the local authority subject to its liability to pay any further costs which may be incurred on account of its acquisition.

Payment of immediate compensation etc., and dispensing with the hearing of objections [sub-section (3) and (4)]

The provisions of sub-sections (3) and (4) also apply to the cases of Emergencies as they apply to the cases of urgency. [See Paras (f) and (g) under urgency provisions above].

¹. As amended by Madras Act XXI of 1948.

². Inserted by S. 2 of the Land Acquisition (Punjab Amendment) Act, 1953; S. 2 of the Punjab Act 17 of 1956 and S. 2 of the Punjab Act 47 of 1956.

³. By C. P. & Berar Act 28 of 1949

⁴. Inserted by section 13 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1953,

PART III
REFERENCE TO COURT AND PROCEDURE THEREON

Section 18
Reference to Court.

1. The Central Provision is followed in the Land Acquisition Acts of Assam, Bihar, Kerala¹, Madras, Orissa and West Bengal.

2. In the Andhra Pradesh² Act, the following words have been deleted from clause (b) of sub-section (2):

"or within six months from the date of the Collector's award, whichever period shall first expire".

3. In the Punjab and Haryana³ Acts, the following provisions have been inserted after sub-section (2):

(2-A) without prejudice to the provisions of sub-section 1, the State Government may, where the acquisition of land is not for the purpose of the Union and it considers the amount of compensation allowed by the award under Section 11 to be excessive, require the Collector by written application that the matter be referred by him to the court for determination of the amount of compensation.

3a. In the Gujarat and Maharashtra Acts⁴, it is provided that the person interested who has not accepted the 'amendment of the award' may require the Collector to refer the matter to the Court.

Explanation.—In any case of land under Part VII, the requisition under this sub-section may be made by the State Government at the request of the company on its undertaking to pay all the costs consequent upon such requisition.

(2-B). The requisition shall state the grounds on which objections to the award is taken and shall be made within six months of the date of award.

4. In the Uttar Pradesh⁵ Act, the above provisions have been incorporated in sub-sections 3 and 4 with the following changes:

(a) The power of making reference to the Court is given to the Land Reforms Commissioner; and

(b) the application of the provisions is not excluded in the cases of acquisition of land for the purpose of the Union.

5. In the Rajasthan Act⁶, sub-section (1) is substituted by the following:—

"The Government department on whose behalf or the company for which acquisition is being made or any person interested who has not accepted the award or the amount thereof may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, the amount of costs allowed, the persons to whom it is payable, or the apportionment of the compensation among the persons interested."

6. In the Haryana⁷, Madhya Pradesh⁸, Maharashtra⁹, Punjab¹⁰ and Rajasthan Acts¹⁰, and new sub-section (3) is added which runs as follows:—

"Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, 1908.

¹. Section 20 of the Kerala Land Acquisition Act, 1961.

². Deleted by S. 7 of the Land Acquisition (Andhra Pradesh Amendment) Act, 1959.

³. Inserted by S. 4 of the Land Acquisition (Punjab Amendment) Act, 1962.

^{3a}. Inserted by S. 8 of the Land Acquisition (Bombay Amendment) Act, 1953.

⁴. Inserted by schd. (Para 7) of the Land Acquisition (U.P. Amendment) Act, 1954.

⁵. Section 18 as amended by S. 10 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

⁶. Added by S. 3 of the Land Acquisition (Punjab Amendment) Act, 1953.

⁷. Added by the C.P. & Berar Act No. 7 of 1949.

⁸. Added by S. 3 (b) of the Land Acquisition (Maharashtra Extension and Amendment) Act, 1964.

⁹. Added by S. 3 of the Land Acquisition (Punjab Amendment) Act, 1953.

¹⁰. S. 18(3) of the Rajasthan Land Acquisition Act, 1953.

7. In the *Mysore¹ Act*, reference to the Court is allowed in the case of non-acceptance of the amendment of the award also, and a new proviso is added to sub-section (2) which runs as follows:

'Provided that every such application shall be made within ninety days from the date of service of the notice from the Deputy Commissioner under sub-section (2) of Section 12.'

Further, a new sub-section (3) is added which runs as follows:—

- (a) The Deputy Commissioner shall within ninety days from the date of receipt of an application under sub-section (1) make a reference to the Court.
- (b) If the Deputy Commissioner does not make a reference to the Court within a period of ninety days from the date of receipt of the application, the applicant may apply to the Court to direct the Deputy Commissioner to make the reference, and the Court may direct the Deputy Commissioner to make the reference within such time as the Court may deem fit.

Section 19

Collector's statement to the Court.

1. The Central Provision is followed in the Land Acquisition Acts of Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Kerala, Madras, Maharashtra, Madhya Pradesh, Orissa, Punjab, West Bengal and Uttar Pradesh.

2. In the *Mysore Act²*, the following words have been added to sub-section (2):

'and any other information available with the Deputy Commissioner relating to the matters referred to the Courts'.

3. In the *Rajasthan Act*, the Collector is required to state to the court the amount of costs, if any, awarded under Section 11 also.

Section 20

Service of notice.

1. The Central Provision is followed in the Land Acquisition Acts of Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Kerala, Madhya Pradesh, Madras, Maharashtra, Orissa, Punjab, U.P., and West Bengal.

2. In the *Mysore Act³*, the Court is required to determine reference (instead of 'objection') and clauses (a) to (c) have been substituted by the following requiring the Court to cause notice to be served on:

- (a) the Deputy Commissioner,
- (b) all persons interested in the reference;
- (c) if the acquisition is not made for the Government, the person or authority for whom it is made.

3. In the *Rajasthan Act*, the Court is required to serve notice under clause (b) to "all persons interested in the objection" (whether or not they have consented without protest to receive payment of the compensation awarded).

Further the following sub-clause is added:

- (d) if the applicant is a person interested, the Government Department on whose behalf or the company for which proceedings for acquisition have been taken⁴.

Section 21

Restriction on scope of proceedings.

Section 22

Proceedings to be in open Court.

The Central provision is followed in all* State Land Acquisition Acts.

1. The Central provision is followed in all* State Land Acquisition Acts.

2. Further, in the *Rajasthan Act⁵*, a new Section 22-A is added which runs as follows:—

"Cross objections.—Whenever in pursuance of Section 18(1) any person interested has raised any objection which has been referred by the Collector for the determination of the Court, the Government Department in whose behalf or the company for which acquisition is being made shall have the right of making cross objections to the Court."

¹. Substituted by S. 20 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961. Section 12(2) required the Deputy Commissioner to give notice of his award or the amendment thereof immediately after it is made to the interested persons.

*. Added by S. 21 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

*. Substituted by S. 22 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

*Does not include State of Nagaland

*. Inserted by S. 11 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

*. As amended by S. 12 of the Rajasthan Land Acquisition (Amendment & Validation) Act, 1966.

Section 23

Matters to be considered in determination compensation.

1. The Central provision is followed in the Land Acquisition Acts of Andhra Pradesh, Assam, Kerala (except in the case of acquisition of land for projects¹), Haryana, Madhya Pradesh^{**}, Madras, Maharashtra³, Mysore, Orissa and Punjab.

2. In the Bihar Act⁴, the following underlined words have been added to clause firstly:

"The market-value of the land at the date of the publication of the notification under Section 4, sub-section (1), or the market-value of the land at the date of the publication of the declaration under Section 6 if there has been no notification under Section 4, sub-section (1)".

3. In the Gujarat Act⁵, the following underlined words have been added to clause fourthly:

"Fourthly—the damage (if any), sustained by the person interest, at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings, and where the person interested is a tenant of the land, only the damage sustained by him by reason of the acquisition injuriously affecting his right as a tenant".

and

a new clause seventhly is added which runs as follows:—

"In the case of any land which according to the terms of the tenure on which it is held is not transferable or portable by metes and bounds without the sanction of the State Government or any competent officer, the market value of similar land held without such restriction".

****In Madhya Pradesh, the Land Acquisition Act, 1894, is amended in its application to Bhopal area by the Land Acquisition (Madhya Pradesh Amendment) Act, 1959, adding the following proviso to clause firstly:—**

"Provided that when the market value of any land situated in Bhopal area, in respect of which the date of publication of the notification aforesaid is after the commencement of the Land Acquisition (Madhya Pradesh Amendment) Act, 1957(21 of 1958), is in excess of its market value as on the 1st day of October, 1955, the market value thereof shall be deemed to be its market value as on the 1st day of October, 1955".

Further a new sub-section (3) is inserted which runs as follows:—

"Where in respect of any land situated in Bhopal area the market value thereof is determined in accordance with the proviso to clause firstly, then in addition to such market value and the additional sum provided under sub-section (2), the Court shall award a further sum not exceeding twenty five per centum of such market value, as may be deemed fit, in consideration of the appreciation in the price of the land concerned by reason of the location of the Capital at Bhopal regard being had to the situation of such land."

1. Section 25 of the Kerala Land Acquisition Act, 1961. For the provisions regarding acquisition of land for projects—see Annexure 1.

2. The words 'or at the relevant date whichever is less, have been added in clause firstly by S. 3(1) (c) of the Land Acquisition (Bombay Amendment) Act, 1948. The amended clause firstly runs as follows:—

'the market value of the land at the date of the publication of the notification under section 4, sub-section (1) or at the relevant date, whichever is less'.

NOTE.—(1) The 'relevant date' was defined to mean the 1st day of January, 1948.

(2) The Supreme Court in N. B. Jeejeebnoy Vs. Assistant Collector, Thana (1965 (1) S. C. R. 636. P. 644-45 held the amending Act of 1948 as unconstitutional. The Court made the following observations that the Act has:

"in the matter of fixing compensation demonstrably contravened the provisions of section 299 of the Government of India Act, 1935. Under the Amending Act, as we have already noticed, though a land may be acquired subsequent to the said Act, the compensation payable in respect thereof will be the value of it as on January 1, 1948. Under the Amending Act, the said dating back has no relevance to the matter of fixing the compensation for the land. It is not 'just equivalent' of what the owner has been deprived of, for the value of the land on that date may be far less than that obtaining on the date of the notification under section 4 of the Land Acquisition Act. We, therefore, hold that the Amending Act was void as the Legislature made it in contravention of the express provisions of Section 299 of the Government of India Act. It was a still-born law".

***. Added by S. 10 of the Land Acquisition (Bihar Amendment) Act, 1960.**

***. Added by S. 14 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.**

4. In the *Uttar Pradesh Act*¹, the following Explanation has been added at the end of clause firstly:

"Explanation.—In judging the market value aforesaid in any case where land is acquired for or in connection with sanitary improvements of any kind or planned development due regard shall be had to the insanitary and inhygenic conditions of the land on the date aforesaid", and sub-section (2) which provides for payment of 15% solatium has been omitted.

5. In the *Rajasthan Act*, (i) the following underlined words have been substituted in clause firstly:

"The market value of the land at the date of the publication of the declaration under Section 6", and

(ii) sub-section (2) provides for the payment of a sum of ten per centum on such market value in consideration of the compulsory nature of the acquisition. However, no sum is to be awarded in consideration of the compulsory nature of acquisition in certain cases².

NOTE.—The Rajasthan Act No. 40 of 1960 for the purposes of housing scheme, has modified clause firstly requiring taking into consideration "the market value of the land at the date of the publication of the declaration under Section 6 or at the relevant date whichever is less" (relevant date to mean the twelfth day of December 1953) and has omitted sub-section (2).

(iii) Further, a new sub-section (3) is added which provides for the following principles to be taken into consideration by the Court in determining the market-value:

- (a) the market value of the land shall be the market value according to the use to which the land was put at the date with reference to which the market value is to be determined under the clause and for the purpose of the market value the Court shall take into consideration transfers of land similarly situated in similar use and shall not admit evidence that any price actually paid for similar land in similar use contains any element of the potential value of the land transferred for any more lucrative use, and if on the material date the land is subject to any restrictions under any law for the time being in force, the market value shall be assessed taking into account these restrictions;
- (b) if it be shown that before such date the owner of the land had taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him;
- (c) if the market value is specially high in consequence of the land being put to use which is unlawful or contrary to public policy, that use shall be disregarded and the market value shall be deemed to be the market value of the land if put to ordinary uses;
- (d) if the market value has been increased by means of any improvement made by the owner or his predecessor-in-interest within one year before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act;
- (e) if the market value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded;
- (f) if the market value of any building is specially high on consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded and the market value shall be deemed to be the market

¹. By Schd. (para 8) of the Land Acquisition (U.P. Amendment) Act, 1954.

². Solatium is not paid in the following cases, namely :—

- (i) when in cases of urgency possession of an area certified to be an unhealthy one by a District Magistrate, is taken.
- (ii) when any land has been acquired for the purpose of an improvement or development trust unless such land consist of—
 - (a) building in the actual possession of the owner or his tenant or occupied free of rent by a relative of the owner and land appurtenant thereto, or
 - (b) gardens not let out but used by the owner.

value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding; and

- (g) when the owner of the land or building has, within two years preceding the aforesaid date, made a return of the rent of the land or building to the Government or any local authority, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct and the market value may be determined on the basis of such rent;

Provided that where any addition to or improvement of the land or building has been made after the date of such latest return and previous to the date with reference to which the market value is to be determined the Court shall take into consideration any increase in the letting value of the land or building due to such addition or improvement.

6. In the *West Bengal Act*⁷, a new clause seventhly is added to sub-section (1) which runs as follows:—

“Seventhly, the loss of earning, if any, caused to the person interested, in consequence of the acquisition of the land, where earning was derived directly from such land.”

Further, a new sub-section (3) is added as follows:

“Compensation payable to a *bargadar* for loss of earning under clause seventhly of sub-section (1) shall not exceed three times the net average annual income which was derived or might be derived from the land during three years immediately preceding the date of acquisition.

Explanation.—The net annual income of a *bargadar* in any year shall be taken to be fifty per cent of the total produce of the land cultivated by him in that year.”

ANNEXURE I

Acquisition of Land for projects

The Kerala Land Acquisition Act, 1961 in its Part VIII⁸ provides for the acquisition of land in project area. Under Section 47A⁹ of the Act, the State Government may specify the project area.

In its application to the acquisition of land in Project area clause firstly of Section 25 of the Kerala Act is substituted by the following:

“first, (a) the market value of the land at the date of the publication of the notification under Section 47A, the value of any improvements to the land effected after that date and before the date of the publication of the notification under Sub-section (1) of Section¹⁰ 3 and where there has been a

normal rise in land¹¹ value” in the locality in which the (1) of Section¹⁰ 3 and, where there has been a normal rise in land value¹¹ in the locality in which the project area lies after the date of the publication of the notification under section 47A and before the date of the publication of the notification under sub-section (1) of section 3, such rise in price subject to a maximum of twenty per cent of the market value of the land at the date of the publication of the notification under section 47A, or

(b) the market value of the land at the date of the publication of the notification under sub-section

(1) of section 3, whichever is less”.

⁷. Added by s. 4 of the Land Acquisition (West Bengal Amendment) Act, 1963.

⁸. As substituted by S. 6 of the Kerala Land Acquisition (Amendment) Act, 1966.

⁹. Section 47(A) of the Act runs as follows :—

“47A. Notification declaring projects to which the provisions of this Part shall apply. — Where the Government are of opinion that as a result of project undertaken or proposed to be undertaken by them there is likelihood of a speculative rise in the land value in the project area, they may, by notification in the Gazette, specify the project area.

Section 47 defines ‘project area’ and ‘Project purpose’ as follows :—

‘Project area’, means the area covered by one or more revenue villages or survey numbers, the whole or any portion of which is needed or is likely to be needed for a project purpose or survey numbers, the ‘project purpose’ means the purpose of execution, expansion or development of a project.

¹⁰. Sub-section (1) of Section (3) of the State Act provides for the publication of preliminary notification for the acquisition of land for public purpose.

¹¹. Under Section 48 of the Act, the expression ‘land-value’ means the value of land not including improvements thereon.

Section 24

Matters to be neglected in determining compensation.

1. The Central provision is followed in the Land Acquisition Acts of Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Kerala, Madhya Pradesh, Madras, Maharashtra, Orissa, Punjab, U.P. and West Bengal.

2. In the *Mysore Act*¹, the following words in italics have been added at the end of clause seventhly:

'seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the notification under sub-section (1) of Section 4, unless in the the notification under sub-section (1) of Section 4, unless in the case of improvements, such improvements were necessary for the maintenance of any building in a proper state of repair; or, and

A new clause eighthly, is added which runs as follows:—

eighthly, where the market value of the land acquired is increased by reason of the use thereof in a manner which may be restrained by any Court or is contrary to law or is detrimental to the health of the inmates of the premises, or public health, the amount of that increase.

3. In the *Rajasthan Act*², the following words in italics have been substituted in clause seventhly:

'Seventhly, any outlay or improvement on, or addition to, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of the giving of the notice under sub-section 5 of Section 4.'

Further, a new Section 24-A is added which runs as follows:—

24-A. Further provisions for determining compensation.—In determining the amount of compensation to be awarded for any land acquired under this Act, the Court shall have regard also to the following provisions, namely:—

- (i) When any interest in any land acquired under this Act has been acquired after the date of the publication of the declaration under Section 6, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land;
- (ii) If in the opinion of the Court any building which is used or is intended or is likely to be used for human habitation is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building.

Section 25

Rules as to amount of compensation

1. The Central provision is followed in the Land Acquisition Acts of Andhra Pradesh, Assam, Bihar, Gujarat, Kerala, Madras, Maharashtra, Madhya Pradesh, Mysore, Orissa, and West Bengal.

2. In the Haryana³, Punjab⁴, Rajasthan⁵ and Uttar Pradesh⁶ Acts, the words 'or be less than the amount awarded by the Collector under Section 11', have been omitted from sub-section (1).

3. In the *Rajasthan Act*, sub-section (3) is omitted.

Section 26

Form of awards.

1. The Central provision is followed in the Land Acquisition Acts of Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Kerala, Madhya Pradesh, Madras, Maharashtra, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal.

2. In the *Mysore Act*⁷, the following words have been added at the end of sub-section (2):

"and, the provision of the said Code relating to execution shall, so far as may be, apply to the execution of such award:

Provided that execution shall not be issued on any such award against the Government or any officer thereof unless it remains unsatisfied for a period of ninety days from the date of such award".

¹. By S. 23 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

². Substituted by S. 13 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

³. Omitted by s. 5 of the Land Acquisition (Punjab Amendment) Act, 1962.

⁴. *Ibid.*

⁵. S. 25(1) of the Rajasthan Land Acquisition Act, 1953.

⁶. Deleted by schedule (para 9) of the Land Acquisition (U.P. Amendment) Act, 1954.

⁷. Inserted by S. 25 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

Section 27

Costs.

1. The Central provision is followed in the Land Acquisition Acts of Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Madhya Pradesh, Madras, Maharashtra, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal.

2. In the Kerala Act¹, sub-section (2) has been omitted.

Section 28

Collector may be directed to pay interest on excess compensation.

1. The Central provision is followed in the Land Acquisition Acts of Assam, Bihar, Haryana, Orissa, Uttar Pradesh and West Bengal.

2. In the *Andhra Pradesh*², *Kerala*³, *Madras*⁴, *Maharashtra*⁵, *Punjab*⁶, and *Rajasthan*⁷ Acts, the rate of interest is fixed at 4 per centum per annum.

3. In the Gujarat Act⁸, the rate of interest is fixed at 4½ per centum per annum.

4. In the Mysore Act⁹, the rate of interest is fixed at 5 per centum per annum.

5. In the Madhya Pradesh Act¹⁰, the interest payable is "at a rate which shall not be less than three per centum per annum and more than six per centum per annum."

¹. Section 29 of the Kerala Land Acquisition Act, 1961.

². Substituted by S. 2 of the Land Acquisition (Madras Amendment) Act, 1953.

³. Section 30 of the Kerala Land Acquisition Act, 1961.

⁴. Substituted by S. 2 of the Land Acquisition (Madras Amendment) Act, 1953.

⁵. Substituted by S. 2 of the Bombay Act 18 of 1938.

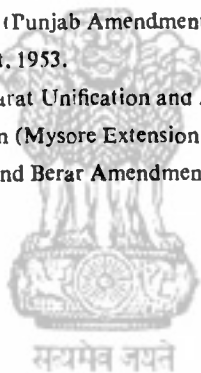
⁶. Substituted by S.4 of the Land Acquisition (Punjab Amendment) Act, 1954.

⁷. S. 28 of the Rajasthan Land Acquisition Act, 1953.

⁸. By section 15 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

⁹. Substituted by S. 27 of the Land Acquisition (Mysore Extension & Amendment) Act, 1961.

¹⁰. Substituted by the Land Acquisition (C.P. and Berar Amendment) Act, 1939.



PART IV
APPORTIONMENT OF COMPENSATION

Section 29

Particulars of apportionment to be specified.

The Central provision is followed in all* State Land Acquisition Acts.

NOTE.—Section 31 of the Kerala Land Acquisition Act, 1961 corresponds to Section 29 of the Central Act.

Section 30

Disputes as to apportionment.

1. The Central Provision is followed in all* State Land Acquisition Acts except in the Kerala and Mysore Acts.

2. In the *Kerala Act*¹, the Collector may also refer the dispute as to the apportionment of compensation amount settled by way of agreement under Section 16 of the State Act, to the decision of the Court.

3. In the *Mysore Act*², a new Section 30-A is added which provides as follows:—

"30-A. *Apportionment of Compensation.*—(1) Where there are several persons interested in the amount of compensation, the Court shall apportion the amount according to the interest of each such person, and shall specify in the award the amount due to each person.

(2) Each such person shall be entitled to obtain execution of the award to the extent of the amount due to him ~~without the~~ consent or concurrence of the other persons."

*Does not include State of Nagaland.

¹. Section 32 of the Kerala Land Acquisition Act, 1961 which corresponds to Section 30 of the Central Act.

². Added by S. 28 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.



PART V
PAYMENT

Section 31

Payment of compensation or deposit of same in Court.

1. The Central provision is followed in all* State Land Acquisition Acts except in the Kerala and Rajasthan Acts.

2. In the *Kerala Act*¹, the provisions of sub-section (1) of Section 33 also apply where award is made under Section 16 of the State Act (*i.e.*, in case of agreement between the Collector and persons interested as to the amount of compensation); and in sub-section (3) the words "the remission of Land revenue on other lands held under the same title" have been omitted.

3. In the *Rajasthan Act*, in sub-section (2), the Collector is required to deposit costs also in the Court, and a new sub-section (5) is added as follows:—

When a person interested in any land and competent to contract in respect thereof has, at any stage of the proceedings for the acquisition of land, stated, in writing before the Collector or, if the proceedings are pending in a Court, before that Court, that he gives up his claim to compensation in respect of the land, he shall be deemed to have received and given a valid discharge for such compensation for the land as would otherwise have been payable to him.

Section 32

Investment of money deposited in respect of land belonging to persons incompetent to alienate.

1. The Central provision is followed in all* State Land Acquisition Acts except in the West Bengal Act.

Compensation awarded to minors and lunatics to be paid.

2. In the *West Bengal Act*², a new Section 32-A is added as follows:—

"If, according to an award made by the Collector under this Act, (hereafter in this section referred to as the payee) the person interested entitled to any compensation or costs awarded is a minor or a lunatic, then notwithstanding anything to the contrary in this Act or in any other law, the Collector shall have the power to pay the amount of such compensation or costs before it is deposited in the court under sub-section 2 of Section 31 or it may be paid by the court after it is so deposited but before it is invested under Section 32, (a) where the payee is a minor, to the guardian of the minor and (b) where the payee is a lunatic, to the manager of the estate of the lunatic appointed under the Indian Lunacy Act, 1912: provided that except in the case of the following classes of guardians, that is to say:

- (i) a natural guardian,
- (ii) a guardian appointed by the will of a minor's father or mother,
- (iii) a guardian appointed or declared by Court, and
- (iv) a person empowered to act as or exercise the powers of guardian by or under any enactment relating to Court of Wards, no payment as aforesaid shall be made unless the guardian furnishes security in accordance with prescribed rules.

Section 33

Investment of money deposited in other cases.

The Central provision is followed in all* State Land Acquisition Acts.

*Does not include State of Nagaland

¹. Corresponding Section 33 of the Act.

². Added by section 3 of the Land Acquisition (West Bengal Amendment) Act, 1964.

Section 34**Payment of interest.**

1. The Central provision is followed in the Land Acquisition Acts of Assam, Bihar, Haryana, Orissa, Uttar Pradesh and West Bengal.

2. In the Andhra Pradesh, Kerala¹, Madras, Maharashtra², Punjab and Rajasthan Acts, the rate of interest is fixed at 4 per centum per annum.

3. In the Gujarat Act³, the rate of interest is fixed at 4½ per centum per annum.

4. In the Mysore Act⁴, the rate of interest is fixed at 5% per centum per annum.

5. In the Madhya Pradesh Act⁵, it is provided that the interest would be payable at a rate which shall not be less than three per centum per annum and more than six per centum per annum.

¹. S. 36 of the Kerala Land Acquisition Act, 1961.

². Substituted by S. 2 of the Land Acquisition (Bombay Amendment) Act, 1938.

³. Substituted by S. 5 of the Land Acquisition (Punjab Amendment) Act, 1953.

⁴. Substituted by S. 16 of Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

⁵. Substituted by S. 29 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

⁶. Substituted by the C.P. & Berar Act 27 of 1939.



PART VI
TEMPORARY OCCUPATION OF LAND

Section 35

Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.

1. The Central provision is followed in all* State Land Acquisition Acts except in the Bihar, Gujarat, Kerala, Maharashtra, Mysore and Rajasthan Acts.

2. In the Bihar Act, the Collector is also empowered to invoke the provisions of Section 35(J), and an explanation is added at the end of sub-section (1) providing that it shall apply to any waste or arable land, notwithstanding the existence thereon of forest, orchard or trees.

3. In the Gujarat¹ and Kerala² Acts, provision is made for the appropriate Government to procure temporary occupation and use of any land.

4. (a) Further, in the Kerala³ Act, provision is made for the appropriate Government to procure temporary occupation and use of land only for a public purpose and to empower the Collector to use the land so procured for a term not exceeding five years.

Further, the following words have been added to sub-section 3:

'The amount of compensation payable shall be an amount equal to the rent which the land would normally fetch if leased, together with five per cent of such rent in consideration of the compulsory nature of the occupation of the land.'

5. In the Land Acquisition Acts of Gujarat⁴, Maharashtra⁵, Mysore⁶, and Rajasthan⁷, the following provisions are made in addition:—

(1A) *'Before issuing a direction under sub-section (1), the State Government may require the Collector to submit—*

- (a) a plan of the land which is needed for occupation and use,
- (b) an estimate of the compensation that would be payable under sub-section (2),
- (c) a report stating whether it is desirable to occupy the land, and

(NOTE.—This clause is provided only by the Rajasthan Land Acquisition Act).

upon the issue of such a requisition the Collector shall cause public notice of the substance of the requisition to be given at convenient places in the locality in which the land is situated.

(1B) After the issue of such notice, it shall be lawful for any officer either generally or specially authorised by the Collector in this behalf, and for his servants and workmen to exercise powers under sub-section (2) of Section 4 (in the Rajasthan Act under sub-section (1) of Section 4).

*Does not include State of Nagaland.

¹ Inserted by S. 11 of the Land Acquisition (Bihar Amendment) Act, 1960.

² By S. 17 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

³ Section 37(1) of the Kerala Land Acquisition, Act, 1961.

⁴ Inserted by S. 10 of the Land Acquisition (Bombay Amendment) Act, 1953.

⁵ *Ibid.*

⁶ Inserted by S. 30 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

⁷ In the State of Rajasthan, the dispute as to the sufficiency of the amount under sub-section (10) can be referred either to the Collector or to the Chief Revenue Officer of the District. Further two Explanations have been added to sub-section (1) (vide S. 14 of the Rajasthan Land Acquisition (Amendment and Validation) Act 1966) which runs as follows:—

"Explanation (1).—For the purpose of this sub-section, the expression 'arable land' includes 'garden land'.

Explanation (2).—This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of scattered trees or sheds."

(1C) The officer authorised under sub-section (1B) shall at the time of his entry pay or tender payment for all necessary damage to be done as aforesaid, and, in the case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector and such decision shall be final.

6. In the *Mysore Act*, a new Section 37A is added as an exception to Section 35 empowering the Deputy Commissioner to acquire temporary occupation and use of any waste or arable land in certain cases under certain conditions. (see Annexure I to Section 37 below).

Section 36

Power to enter and take possession and compensation on restoration.

1. The Central provision is followed in all* State Land Acquisition Acts except in the *Kerala Act*.

2. In the *Kerala Act*, in the proviso to sub-section (1) the words 'or for a Company' have not been used in addition to the words 'for a public purpose'.

Section 37

Difference as to condition of land.

1. The Central provision is followed in all* State Land Acquisition Acts except in the *Rajasthan Act* wherein it is further provided that the provision of Part III of the Act would apply *mutatis mutandis* where difference as to the condition of land is referred to the decision of the Court by the Collector.

2. In the *Mysore Act*⁶, a new Section 37-A is added by way of exception to Section 35 (see Annexure I).

3. In the *Rajasthan*¹¹ *Act*, a new Section 37-A is added which provides for amendment of certain provisions of the Act for the purposes of the acquisition of land for Union Government (see Annexure II).

ANNEXURE I

In the *Mysore Act*, the new Section 37-A provides as follows:—

37A. Temporary occupation in urgent cases.—(1) Notwithstanding anything contained in section 35, whenever it appears to the Deputy Commissioner that the temporary occupation and use of any waste or arable land are needed for the purpose of affording accommodation or other relief to persons displaced owing to damage caused to their dwelling houses or other buildings by fire, flood, or other unforeseen events, the Deputy Commissioner may enter upon and take possession of the land and use or permit the use thereof in accordance with such terms as he may specify, for a period not exceeding one year from the commencement of such occupation.

(2) The Deputy Commissioner shall immediately report to the State Government the fact of such taking possession and the reasons therefore and shall give effect to such orders as the State Government may make in the matter.

(3) The Deputy Commissioner shall, as soon as may be, after taking possession of the land, give notice in writing to the persons interested in such land of the fact of taking possession and the period for which the land would be occupied and used, and shall for the occupation and use thereof for such period and for the materials, if any, to be taken therefrom, pay to the persons interested such compensation, as shall be agreed upon in writing between him and such persons respectively.

(4) In case the Deputy Commissioner and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Deputy Commissioner shall refer such difference to the decision of the Court.

(5) On the expiration of the period fixed under sub-section (1), the Deputy Commissioner shall restore the land to the persons interested therein. The provisions of sub-section (2) of section 36 and section 37 shall apply *mutatis mutandis* to such restoration.

ANNEXURE II

In the *Rajasthan Act*, the new Section 37A provides as follows:—

Acquisition of land for purposes of the Union

37-A. State Government competent to acquire land for purposes of the Union.—(1) Subject to the provisions of sub-section (2), the State Government may acquire land situated in the State, for any public purpose, being a purpose of the Union, if a request in writing is made to it by the Central Government or any officer thereof, generally or specially authorised on this behalf.

(2) In every case of acquisition under sub-section (1), the provisions of this Act shall, so far as may be, have effect as if—

(i) after the expression "public purpose" wherever occurring, the expression, "being a purpose of the Union" were inserted;

(ii) for the expression "State Government department" or the expression "Government department" wherever occurring, the expression "Central Government department" were substituted;

* Inserted by S. 31 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

* Does not include State of Nagaland.

* Section 38 of the Kerala Land Acquisition Act, 1961.

⁶. Added by S. 31 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

¹¹. By Section 15 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

(iii) In section 6, in the proviso to sub-section (1), for the expression "a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority", the expression "the Central Government" were substituted;

(iv) In section 17A, for the expression "local authority" or the expression, "that authority", wherever occurring, the expression "the Central Government" were substituted;

(v) after section 36, the following new section were inserted:—

"36A. Liability of the Central Government to pay compensation etc., in cases of temporary occupation of land—Where land is needed or acquired under section 35 or section 36, for purposes of the Union, the Compensation or damage payable under the said sections shall be paid by the Central Government".

(vi) in section 48—

(a) in sub-section (1) for the expression "shall be at liberty to", the expression "may, upon the request of the Central Government" were substituted;

(b) after sub-section (2), the following sub-section were inserted, namely:—

"(2A) Where the State Government withdraws from the acquisition upon the request of the Central Government, compensation payable under this section shall be paid by the Central Government"; and

(vii) in section 48A, after the expression "compensation", the expression "from the Central Government" were substituted.



PART VII
ACQUISITION OF LAND FOR COMPANIES

Section 38

Company may be authorised to enter and survey.

The Central provision is followed in all* State Land Acquisition Acts except in the Bihar and Rajasthan Acts.

In the *Bihar Act*, the Collector is also empowered to authorise any officer of the company to exercise the powers conferred by Section

In the *Rajasthan Act*, Sub-section (2) is substituted by the following:—

“In every such case Section 4 shall be construed as if for the expression ‘for a public purpose’ or the expression ‘for such purpose’ or the expression ‘for the public purpose’, the expressions ‘for the purpose of the company’ were substituted and for the words ‘any officer subordinate to it’, the words ‘any officer of the company’ were substituted.”

Section 38A

Industrial concern to be deemed company for certain purposes.

The Central provision is followed in all* State Land Acquisition Acts*, except in the Madhya Pradesh Act, wherein it is omitted.

Section 39

Previous consent of appropriate Government and execution of agreement necessary.

1. The Central provision is followed in all* State Land Acquisition Acts except in the Gujarat and Uttar Pradesh Acts.

2. In the *Gujarat Act*, previous consent of the Government is required for the application of the provisions of Sections 4 to 37 of the Act.

NOTE.—This change in the Gujarat Act, is due to the inclusion of the words (or for a company) in Section 4 of the Act).

3. In the *Uttar Pradesh Act*, a new sub-section (2) is added which runs as follows:—

“In cases of acquisition of land for a society registered under the Societies Registration Act, 1860, sub-section (1) shall have effect as if for the words and figures ‘sections 6 to 37’ (both inclusive) the words and figures ‘sections 6 and 7’ had been substituted”.

Section 40

Previous enquiry.

1. The Central provision is followed in all* State Land Acquisition Acts except in the Gujarat and Kerala Acts.

2. In the *Gujarat Act*, the following words have been deleted from sub-section (1):—

‘either on the report of the Collector under Section 5A sub-section (2), or’.

3. In the *Kerala Act*, in clause (aa) of sub-section (1) the following words have been added at the end:

“and that the building or work which such company is intending to construct is meant to subserve the public purpose of the industry or work for which it is being constructed, or”

and the following clause (c) has been added—

“that such acquisition is needed for a purpose calculated to promote and develop agriculture, industry or cooperation.”

*Does not include State of Nagaland.

1. Inserted by S. 12 of the Land Acquisition (Bihar Amendment) Act, 1966.

2. Substituted by S. 16 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

3. In S. 41 of the Kerala Land Acquisition Act, 1961, the slight change in the last portion of the section due to the overall change in the Act for the purpose of a company.

In the Rajasthan Act, since Section 7 is omitted, its reference in section 38A is deleted.

4. Substituted by S. 18 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

5. Substituted by Schd. (para 10) of the Land Acquisition (U.P. Amendment) Act, 1954.

6. Deleted by S. 19 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

7. Section 43 of the Act as amended by S. 3 of the Kerala Land Acquisition (Amendment) Act, 1966.

Section 41

Agreement with appropriate Government.

1. The Central provision is followed in all* State Land Acquisition Acts except in the Gujarat Act.

NOTE.—In the *Kerala Act*, clause (c) of Section 43 of the State Act, is also referred to.

2. In the *Gujarat Act*, the following words have been deleted:

'after considering the reports, if any, of the Collector under Section 5A, sub-section (2) or'.

The Central provision is followed in all State Land Acquisition Acts.

Section 42

Publication of agreement.

Section 43

Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.

1. The Central provision is followed in all* State Land Acquisition Acts except in the *Kerala and Rajasthan Acts*.

2. In the *Kerala Act*, this provision is omitted.

3. In the *Rajasthan Act*, the words 'the Government' are used for the words 'the Secretary of State for India in Council, the Secretary of State, the Central Government or any State Government'.

Section 44

How agreement with Railway Company may be approved.

The Central provision is followed in all State Land Acquisition Acts except in the *Kerala and Rajasthan Acts* wherein it has been omitted⁹.

Section 44A

Restriction on transfer etc.

The Central provision is followed in all* State Land Acquisition Acts.

Section 44B

Land not to be acquired under this part except for certain purpose for private companies other than Government companies.

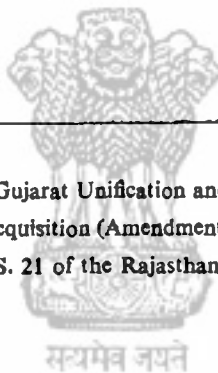
The Central provision is followed in all* State Land Acquisition Acts.¹⁰

*Does not include State of Nagaland.

⁹. Deleted by S. 2 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

⁹. Omitted by S. 20 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

¹⁰. In the Rajasthan Act, it was inserted b. S. 21 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966



PART VIII
MISCELLANEOUS

Section 45¹
Service of notices.

1. The Central provision is followed in all² State Land Acquisition Acts except in the Andhra Pradesh, Gujarat, Maharashtra, Mysore and Rajasthan Acts.

NOTE.—In the Land Acquisition Acts of Gujarat and Maharashtra, the provisions of Section 45 are also applicable for the purposes of Section 3A of the States' Act.

2. In the *Andhra Pradesh Act*³, the following words have been substituted in proviso to sub-section (3):—

'the notice shall be deemed to be served on such person on the date on which the notice sent by registered post will, in the usual course of post, be received by the addressee, for the words of the Central Act:

"service of it may be proved by the production of the addressee's receipt."

3. In the *Mysore Act*⁴, the new Section 45 provides as follows:—

"45. *Service of notices.*—(1) Subject to the provisions of this section and any rules that may be made under this Act, the mode of service of notices issued under this Act shall be as follows:—

(a) A notice of a general nature or affecting a class of persons shall be published—

(i) in the Official Gazette or any newspaper published in Kannada or English and in circulation in the District in which the land concerned is situated, and

(ii) by affixing copies of the notice in prominent places on or near the land concerned;

(b) A notice affecting an individual corporation or firm shall be served in the manner provided for the service of summons under rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, of the First Schedule to the Code of Civil Procedure, 1908;

(c) A notice affecting an individual person (not being a corporation or firm) shall be served in the manner provided for the service of summons in the Code of Civil Procedure, 1908, or by sending it by registered post under a letter addressed to the person named therein at his last known residence address or place of business, and the notice shall be deemed to be served on such person on the date on which the notice sent by registered post will, in the usual course of post, be received by the addressee.

(2) Where the ownership of the land is in dispute or where the persons interested in the land are not readily traceable and the notice cannot be served without undue delay, the notice may be served by publishing it in the official Gazette, where possible, by affixing a copy thereof at any conspicuous part of the land to which it relates."

4. In the *Rajasthan Act*, a new sub-section (4) has been added which runs as follows:—

'A public notice required to be given under this Act shall be in writing and shall be signed and sealed by the officer giving the same. It shall be affixed at the notice board of the office of such officer and the copies of such notice shall be affixed on the notice board of the tehsil concerned and on the notice board of the Village Panchayat, if any, constituted under any law

¹. Section 49 of the Kerala Land Acquisition Act, 1961.

²Does not include State of Nagaland.

³. Inserted by S. 8 of the Andhra Pradesh Land Acquisition (Amendment) Act No. XX of 1969.

⁴. Substituted by S. 32 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

for the time being in force. Its contents shall be made widely known in the locality in which the land proposed to be acquired is situated, by affixing copies thereof at some convenient place on or near about such land in other conspicuous public places in the locality or by publishing the same by beat of drums or by advertisement in a newspaper having wide circulation in the locality or by any two, or more of these means."

5. In the *Gujarat and Maharashtra Acts*¹, in the case of a notice under Section 3A also a copy of the notice can be signed by the officer therein mentioned.

Section 46

Penalty for obstructing acquisition of land.

1. The Central provision is followed in all* State Land Acquisition Acts except in the Gujarat, Maharashtra, Mysore and Rajasthan Acts.

2. In the *Gujarat and Maharashtra Acts*², the provisions of Section 46 are also applicable for the purposes of Sections 3A and 35 of the State Act.

3. In the *Mysore Act*³, the provisions of Section 46 are also applicable for the purposes of sub-section (1A) of Section 6 of Section 35.

4. In the *Rajasthan Act*⁴, the provisions of Section 46 are also applicable for the purposes of any other provision of the State Act.

Section 47

Magistrate to enforce surrender.

1. The Central provision is followed in all* State Land Acquisition Acts, except in the Gujarat, Kerala and Rajasthan Acts.

2. In the *Kerala and Rajasthan Acts*, the following words have been omitted:

"or (within the towns of Calcutta, Madras and Bombay) to the Commissioners of Police, 'or Commissioners (as the case may be)'".

3. In the *Gujarat Act*⁵, a new Section 47A is added which runs as follows:—

"47A. (1) in the application of this Act to the State of Gujarat, for Section 47 the provisions of sub-sections (2) and (3) of this section shall be substituted.

(2) If the Collector is opposed or impeded in taking possession under this Act of any land or in preventing enjoyment of any easement extinguished under this Act, he shall, if a District Magistrate, enforce the surrender of the land to himself, or the closure of such easement and if not such Magistrate, he shall apply in any area for which a Commissioner of Police has been appointed to the Commissioner of Police and elsewhere to any Executive Magistrate and such Commissioner or Magistrate shall enforce the surrender of the land to the Collector, or as the case may be, the closure of such easement.

(3) Any action taken by a Collector, Magistrate or Commissioner of Police under sub-section (2) shall not be questioned in any Civil Court and no injunction shall be issued by such Court for restraining such action, but the aggrieved party shall be entitled in such Court to reasonable compensation for any damage suffered by him by reason of the powers under this section being exercised by any such officer wrongfully or without authority".

Section 48

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

1. The Central provision is followed in all* State Land Acquisition Acts except in the Maharashtra and Rajasthan Acts.

2. In the *Maharashtra Act*⁶, the powers of the Government under the section can also be exercised by the Commissioner.

¹. Inserted by S. 22 of the Rajasthan Land Acquisition (Amendment) Act, 1966.

². Added by S. 3 of the Land Acquisition (Bombay Amendment) Act, 1945.

*Does not include State of Nagaland.

³. Inserted by S. 4 (2) of the Bombay Act 20 of 1945 and by S. 11 of the Bombay Act 35 of 1953.

⁴. Inserted by S. 33 of the Land Acquisition (Mysore Extension and Amendment), Act, 1961.

⁵. Inserted by S. 23 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966.

⁶. Section 51 of the Kerala Land Acquisition Act, 1961.

⁷. Inserted by S. 21 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

⁸. Inserted by S. 8 of the Land Acquisition (Bombay Amendment) Act, 1958 (Act of 8 of 1958).

3. In the *Rajasthan Act*, two new Sections 48A and 48B have been added which run as follows:—

48A. Compensation to be awarded when land not acquired within one year.—(1) If within a period of one year from the date of the publication of the declaration under Section 6 in respect of any land, the Collector has not made an award under Section 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

48B. Sections 43 and 48A not to apply in certain cases.—No compensation shall be payable in pursuance of Section 48 or Section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement with, or the acceptance of a payment to, the owner of the land.

Section 49

Acquisition of part of house or building.

1. The Central provision is followed in the Land Acquisition Acts of Andhra Pradesh, Assam, Bihar, Haryana, Kerala, Madhya Pradesh, Madras, Maharashtra, Mysore, Orissa, Punjab, Uttar Pradesh and West Bengal.

2. In the *Rajasthan Act*¹, the words "furnish a copy of order of the State Government to the person interested, and shall thereafter" have been omitted and for the words "Sections 6 to 10 both inclusive" the words 'Sections 6, 9 and 10' have been substituted in sub-section (3).

Further, a new sub-section 4 is added which provides as follows:—

"For the purposes of sub-section (1) land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house".

3. In the *Gujarat Act*², a new Section 49-A is added which runs as follows:—

"49A. Additional circumstances in which Section 49 shall have effect.—

(1) Where the owner has expressed a desire under sub-section (1) of Section 49 that the whole of the house, manufactory or building shall be acquired, the provision of that sub-section shall have effect only when the Collector is satisfied that the acquisition of part of such house, manufactory or building shall so adversely effect the use of remaining part for the purpose for which it was being used, as to justify the acquisition of the whole of the house, manufactory or, as the case may be, building.

2. Where under the proviso to sub-section (1) of Section 49 the owner withdraws or modifies the desire expressed by him it shall be lawful for the Collector to put in force the provisions of this Act for the acquisition of such part of the house, manufactory or building as may be in conformity with such withdrawal or modification."

Section 50

Acquisition of land at cost of a local authority or Company.

1. The Central provision is followed in the Land Acquisition Acts of Andhra Pradesh, Assam, Bihar, Haryana, Kerala³, Madhya Pradesh, Madras, Maharashtra, Orissa, Punjab, Uttar Pradesh, and West Bengal.

2. In the *Gujarat Act*⁴, in sub-section (2), it is provided that the local authority or company 'shall be called upon to appear and adduce evidence if any.'

3. In the *Rajasthan Act*⁵, sub-section 2 has been omitted.

4. In the *Mysore Act*⁶, two new sub-sections (IA) and (IB) have been inserted after sub-section 1 which run as follows:—

(IA) If the charges of an incidental to such acquisition is not defrayed from such funds by a Local authority after such time as may be fixed by the State Government, the State Govern-

¹. Omitted and substituted by s. 24 of the Rajasthan Land Acquisition (Amendment) Act, 1966.

². Inserted by S. 22 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

³. S. 55 of the Kerala Land Acquisition Act, 1961.

⁴. Substituted by S. 23 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

⁵. Omitted by S. 25 of the Rajasthan Land Acquisition (Amendment) Act, 1966.

⁶. Inserted by S. 34 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

ment may by order direct the person in custody of such fund to pay the amount due in priority to any other charges against such fund and such person shall, notwithstanding anything contained in any law, so far as the fund to the credit of the local authority admit, be bound to comply with such order.

- (IB) Without prejudice to any other mode of recovery from any company liable to defray the charges of an incidental to such acquisition, the amount payable by the company may, notwithstanding anything contained in any law, be recovered from the company as an arrear of land revenue.

Section 51¹

Exemption from stamp-duty and fees.

Section 52**

Notice in case of suits for anything done in pursuance of Act.

The Central provision is followed in all* State Land Acquisition Acts.

1. The Central Provision is followed in all* State Land Acquisition Acts.

2. In the States of Gujarat, Haryana, Maharashtra and Punjab, a new Section 52A providing for altogether different matters is inserted after Section 52.

(i) The provisions of Section 52A of the *Haryana and Punjab Acts*³ run as follows:—

52A. Protection of compensation.—No compensation awarded or awardable under this Act:—

- (a) before it is actually paid to the person entitled to receive the same; or
- (b) before or after it is actually paid to the person entitled to receive the same in respect of any land which is not liable under the law for the time being in force to attachment or sale in execution of a decree or order of any Court, shall be liable to seizure, attachment or sequestration by process of any Court, at the instance of a creditor, for any demand, against the person entitled to compensation or in satisfaction of a decree or order of any Court, and, notwithstanding anything to the contrary in any law for the time being in force, neither the official assignee nor any receiver appointed under any law shall be entitled to proceed against or to have any claim on any such compensation.

(ii) The provisions of Section 52-A to the *Maharashtra Act*⁴, run as follows:—

52A. Delegation.—Notwithstanding anything contained in the foregoing provisions, a Collector may, subject to the general or special orders of the State Government, delegate any of his powers or functions under this Act to any officer not below the rank of a Mamlatdar or to a Land Acquisition Officer specially appointed by the State Government in this behalf.

(iii) In the *Gujarat Act*⁵; the above provisions of the *Maharashtra Act* are provided in sub-section (1) and a new sub-section (2) is added which runs as follows:—

“(2) The State Government may, by notification in the Official Gazette, direct that the powers, exercisable by it under this Act, except the power to make rules under Section 55, shall in such circumstances and under such conditions, if any, as may be specified in such notification, be exercisable also by an officer subordinate to it not below the rank of a Collector.”

Section 53***

Code of Civil Procedure to apply to proceedings before Court.

The Central provision is followed in all* State Land Acquisition Acts.

¹Section 56 of the Kerala Land Acquisition Act, 1961 corresponds to Section 51 of the Central Act.

*Does not include State of Nagaland.

**Section 51 of the Kerala Land Acquisition Act, 1961 corresponds to Section 52 of the Central Act.

³ Inserted by S. 2 of the Land Acquisition (East Punjab Amendment) Act, 1948.

⁴ Inserted by S. 6 of the Land Acquisition (Bombay Amendment) Act, 1949.

⁵ Inserted by S. 24 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

***Section 59 of the Kerala Land Acquisition Act, 1961 corresponds to Section 53 of the Central Act.

Section 54**

Appeals in proceedings before Court.

The Central provision is followed in all* State Land Acquisition Acts except in the Mysore Act.

In the *Mysore Act*, it is further provided that 'from any decree of a Court, other than the High Court, passed on an appeal under sub-section (1) an appeal shall lie to the High Court, if, but only if, the amount or value of the subject matter in dispute in appeal exceeds two thousand rupees or the case involves any question of title to land.'

Section 55

Powers to make rules.

1. The Central provision is followed in all State Land Acquisition Acts¹ except in the Kerala Act.

2. In the *Kerala Act*, the provisions of the section have been substituted by the following:—

- "(1) The Government may, by notification in the Gazette, make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement.
- (2) All rules made under this section shall be laid before the Legislative Assembly for not less than fourteen days, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as the Legislative Assembly may make during the session in which they are so laid, or the session immediately following."

ADDITIONAL PROVISIONS

In *Kerala Act*, the following additional provisions have been made.

PART VIII*Acquisition of Land for Projects*

S. 46 Provisions of this Part applicable in the case of specified projects.—The provisions of this Part shall apply to the acquisition of land in such project area as may be specified by the Government by notification under section 47A:

Provided that provisions shall not apply to any acquisition of land in a project area where the notification under sub-section (1) of section 3 in respect of the acquisition is not published within three years from the date of the publication of the notification under Section 47A.

S. 47. Definition.—In this Part, unless the context otherwise requires,—

- (i) "project area" means the area covered by one or more revenue villages or survey numbers, the whole or any portion of which is needed or is likely to be needed for a project purpose;
- (ii) "project purpose" means the purpose of execution, expansion or development of a project.

S. 47A. Notification declaring projects to which the provisions of this part shall apply.—Where the Government are of opinion that as a result of a project undertaken or proposed to be undertaken by them,

there is likelihood of a speculative rise in the land value in the project area, they may, by notification in the Gazette, specify the project area.

S. 48. Acquisition of land in project areas.—Whenever land is proposed to be acquired in a project area, the provisions of this Act shall apply subject to the following modifications, namely:—

- (1) for section 11, the following section shall be substituted, namely:—

"11. Enquiry and award by Collector.—One day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into—

- (a) the objections, if any, which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8;
- (b) the value of the land at the date of the publication of the notification under section 47A;
- (c) the value of any improvements to the land effected after the date referred to in clause (b) and before the date of the publication of the notification under sub-section (1) of section 3;

**Section 60 of the Kerala Land Acquisition Act, 1961 corresponds to Section 54 of the Central Act.

*Does not include State of Nagaland.

¹. Substituted by S. 35 of the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

². In the *Rajasthan Act*, a new sub-section (4) which correspond to the second proviso is inserted by S. 26 of the *Rajasthan Land Acquisition Act, 1966* which runs as follows:—

"(4) All rules, alterations and additions finally made under this Act on or after the coming into force of the *Rajasthan Land Acquisition (Amendment and Validation) Act, 1966* shall be laid as soon as may be after they are so made, before the House of the State Legislature while it is in session, for a period of not less than fourteen days which may be comprised in one session and if, before expiry of the session in which they are laid or of the session immediately following the House of the State Legislature makes any modification in any of such rule, alteration or addition or resolves that any such rule, alteration or addition should not be made, such rule, alteration or addition shall thereafter have effect in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder."

³. S. 61 of the Kerala Land Acquisition Act, 1961.

(d) where there has been a normal rise in land value in the locality in which the project area lies after the date of the publication of the notification under section 47A and before the date of the publication of the notification under sub-section (1) of section 3, such rise in price;

(e) the value of the land at the date of the publication of the notification under sub-section (1) of section 3; and

(f) the respective interest of the persons claiming the compensation, and shall make an award under his land of—

(i) the true area of the land;

(ii) the compensation which in his opinion shall be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known of believed to be interested in the land, or whom or of whose claims, he has information, whether or not they have respectively appeared before him.

Explanation.—For the purposes of this section and clause first of sub-section (1) of section 25, the expres-

sion "land value" shall mean value of land not including improvements thereon.

(2) In sub-section (1) of Section 25, for clause first, the following clause shall be substituted namely:—

"first, (a) the market value of the land at the date of the publication of the notification under Section 47A, the value of any improvements to the land effected after that date and before the date of the publication of the notification under sub-section (1) of Section 3, and, where there has been a normal rise in land value in the locality in which the project area lies after the date of the publication of the notification under Section 47A and before the date of the publication of the notification under sub-section (1) of Section 3, such rise in price subject to a maximum of twenty per cent of the market value of the land at the date of the publication of the notification under Section 47A, or

(b) the market value of the land at the date of the publication of the notification under sub-section (1) of section 3,

whichever is less ;"

PART IX

Miscellaneous

S. 54. Power to continue the proceedings started by another Collector.—Any Collector who has started proceedings under this Act for the acquisition of land may, on the appointment of any other officer by the Government to perform the functions of a Collector under this Act for the acquisition of the same land, make over the proceedings to the officer so appointed and the officer so appointed may continue the proceedings from the state at which the former left it, as if the proceedings had been started by him.

S. 58. Establishment of Land Acquisition Courts.—(1) The Government may, by notification in the Gazette, establish Land Acquisition Courts at any place or places in the State of Kerala.

(2) When a Land Acquisition Court has been established under sub-section (1), a Judicial Officer not below the rank of a Subordinate Judge shall be appointed as Judge of the Court by notification in the Gazette.

(3) The local limits of the jurisdiction of the Land Acquisition Courts and the pecuniary limits of the jurisdiction of such Courts shall be such as the Government may, by notification in the Gazette, fix.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), the Government may, by notification in the Gazette, invest any Civil Court not lower in rank to that of a Subordinate Judge's Court with the Jurisdiction of Land Acquisition Court, subject to such territorial and pecuniary limits of jurisdiction as may be specified in the notification.

APPENDIX 12

(Ref. Para 11.6)

Summary of the distinguishing features of the Law of Land Acquisition as in force in the various States.

Andhra Pradesh

The Land Acquisition (Andhra Pradesh Extension and Amendment) Act, 1959 (Andhra Pradesh Act No. 20 of 1959) has adopted the Land Acquisition Act, 1894 duly amended by Madras Acts No. 21 of 1948 and 12 of 1953, and Andhra Pradesh Act No. 20 of 1959. The State has also adopted the Central Amending Act No. 31 of 1962.

(i) The Madras Act No. 21 of 1948

The Act provides for taking possession of any waste or arable land in cases of urgency even if scattered trees or temporary structures like pandals, huts, sheds etc., are situated thereon. Further, it provides for taking possession of any land under S. 17 when it is needed for the following purposes also:

- "(i) for the purpose of any library or educational institution, or
- (ii) for the construction, extension or improvement of—
 - (a) any building or other structure in any village for the common use of the inhabitants of such village, or
 - (b) any godown for any society registered or deemed to be registered under the Madras Cooperative Society Act, 1932, or
 - (c) any dwelling house for the poor, or
 - (d) any irrigation tank, irrigation or drainage channel, or any well, or
 - (e) any road."

(ii) The Madras Act No. 12 of 1953

The rate of interest payable under Sections 28 and 34 has been reduced from 6 to 4 per cent; however, the cases of acquisition wherein possession was taken before the commencement of this amending Act are excepted from its operation.

(iii) The Andhra Pradesh Act No. 20 of 1959

After repealing the Hyderabad Act IX of 1309 Fasli, the Act has made consequential changes in S. 3(e) so as to include a company or a society registered or incorporated by or under any corresponding law in force in the territories that earlier formed part of the State of Hyderabad; and, in S. 17(2), it has permitted the taking of possession of land thereunder for the construction, extension or improvement of any godown for any society registered or deemed to be registered under the Hyderabad Cooperative Societies Act, 1952, in addition to those that were registered or deemed to be registered under the Madras Cooperative Societies Act, 1932.

Substituted clause (b) of proviso to S. 18(2) provides that the objections to the Collector's award must be filed by the persons who were neither present nor represented before the Collector, within two months (as against six weeks in the Central Act) from the date of service of the notice from the Collector of the making of award. Also, proviso to S. 45(3) is amended to provide that the notice shall be deemed to have been served on such person on the date on which the notice sent by registered post would, in the usual course of post, be received by the addressee.

Assam

With a view to providing for speedy acquisition of land for the construction of suitable works to protect the Dibrugarh sub-division from floods, the Assam Land Acquisition (Dibrugarh) Act, 1953 (Act No. 23 of 1953) made the following modifications in the Act for the purpose.

The Collector has been empowered to take possession of the land after notification in the Gazette and service of notice.

The amount of compensation for the land excluding buildings is not to exceed 20 times the annual land revenue and in this respect the following factors are required to be taken into consideration:

- (i) value of land at the date of acquisition;
- (ii) likelihood of a possible soil erosion prejudicially affecting the value;
- (iii) damage sustained by reason of the taking of the standing crops or trees at the time of taking possession.

The amount of compensation for building or structure is to be equal to the sale proceeds of the material plus 15 per cent of such amount. In lieu of compensation it is open to the owner to take away the material.

Any person aggrieved by the award of the Collector may require the Collector within seven days from the date of award to refer the matter for the determination of the Court.

Bihar

The Bihar Act No. 11 of 1961 make the Central Act applicable to the State by reviving its provisions that were modified by the Bihar Acts No. 17 of 1951, 21 of 1956 and 34 of 1956 and provides certain other amendments to the Central Act.

The Bihar Act No. 11 of 1961

In the expression 'Collector' is included 'the District Collector, Deputy Commissioner, Additional Collector, Additional Deputy Commissioner and any specially appointed officer' for the purpose of performing the functions of a Collector except those under Sections 4, 5-A, 6, 35 and 38, and in the expression 'public purpose' is included the following in the place of the existing clause:

- "Provision for or in connection with
 - (i) sanitary improvements of any kind including reclamation; and
 - (ii) the laying out of village sites or townships, or the extension, planned development or improvement of existing village sites or townships."

The new Section 4(1) empowers the Collector, in addition to the appropriate Government, to issue notification when he is satisfied that land in any locality is needed or likely to be needed for any public purpose and provides for the publication of notification at the offices of the Collector, sub-divisional officer, smallest revenue administrative unit, i.e., N.E.S. Block, Circle Anchal or otherwise, and Gram Panchayat, if there is any, and at some conspicuous place in the village in which the land is situated. The copies of

the notification are required to be served on all persons known or believed to be interested in the land. The Collector is also empowered to exercise powers under Section 4(2).

The time for the filing of objections under Section 5A(i) is fixed at within *thirty days* after the date of the publication of the notification under Section 4(1) at some conspicuous place in the village in which the land is situated or the date of the service of the notice on the persons interested whichever is later. The new Sub-Section 2 of Section 5A empowered the Collector to decide the objection; however, the Government either *suo-motu* or on the application of any interested person can call for the record of Collector's proceedings and pass any order as it thinks fit. Otherwise the Collectors' decision is final.

Section 6 is amended to empower the Collector, in addition to the appropriate Govt., to make a declaration after hearing the objections under Section 5A, if any and acquire the land thereafter. Further, in the proviso for the words 'public revenues' the words 'consolidated funds of the State' are substituted.

The new Section 12A enables the Collector to correct any clerical or arithmetical mistake in the award either *suo-motu* or on the application of the interested person any time not later than six months from the date of the award, and before the making of reference to the court. The notice of corrections made must be given to all interested persons, and any excess amount discovered to have been paid should be required to be refunded after giving the concerned persons an opportunity to hear and in case he fails or refuses to pay it the same should be realised as a public debt.

The new Section 17 provides that the possession under the Section may be taken on the expiry of fifteen days from the publication of the declaration under Section 6 (and not notice under Section 9 as in the Central Act), or with the consent of the person interested in writing at any time after the publication of the notification under S. 4 in the village in which the land is situated. The section is made applicable to any waste or arable land, notwithstanding the existence thereon of forest, orchard or trees.

The power under sub-section 2 is required to be exercised in the following cases:

"Whenever it becomes necessary for the purpose of protecting life or property from flood, erosion or other natural calamities or for the maintenance of communication other than a railway communication or it becomes necessary for any Railway Administration (other than the Railway Administration of the Union), owing to any sudden change in the channel of any navigable river or other unforeseen emergency for the maintenance of their traffic or for the purpose of making thereon a river-side or *ghat* station, or providing convenient connection with or access to any such station."

The immediate possession under the sub-section can be acquired after the publication of the declaration under S. 6 or with the consent in writing of the person interested given in the presence of headman of the village or *Mukhia* and Sarpanch at any time after the publication of the notification under Section 4 in the village in which the land is situated. The provisions of S. 5A are not to be applied for the taking of possession under this section when the appropriate Government so directs or when the possession has been taken with the consent of the interested person.

In S. 23(1) first clause is amended to provide that where the notification under S. 4 is not issued the market value of the land at the date of the publication of the declaration under Section 6 is to be taken into account.

The powers of the appropriate Government under Sections 35(1) and 38(1) may also be exercised by the Collector. The new Explanation to Section 35(1) provides that the section would apply to any waste or arable land, notwithstanding the existence thereon of forest, orchard or trees.

Gujarat

The Land Acquisition (Gujarat Unification and Amendment) Act, 1963 (Gujarat Act No. 20 of 1965) has extended the Central Act duly amended by Bombay Acts No. 18 of 1938, 20 of 1945, 35 of 1949, 27 of 1950, 35 of 1953 and 12 of 1958 and the Gujarat Act No. 20 of 1965. A summary of the important provisions of these Bombay Acts which equally apply to the State of Gujarat has been given under Maharashtra.

The Gujarat Act. No. 20 of 1965

In the expression 'public purpose' is included "a housing scheme which the State Government may from time to time undertake for the purpose of increasing accommodation for housing persons and shall include any such scheme undertaken from time to time with the previous sanction of the State Government by a local authority or company".

A new Section 3A has been added for the purpose of enabling the State Government to determine whether land in any locality is needed or likely to be needed for a public purpose, it shall be lawful for any officer of the State Government generally or specially authorised by the Government in this behalf and for its servants and workmen:—

- (i) to enter upon and survey and take level of any land in such locality;
- (ii) to dig or bore into the subsoil;
- (iii) to set out the boundaries of the land to be needed and the intended line of the work (if any) likely to be done thereon;
- (iv) to mark such levels, boundaries and line by placing marks and cutting trenches;
- (v) to measure the land so likely to be needed; and
- (vi) where otherwise the survey cannot be completed and the levels taken or the boundaries or lines marked, to cut down and clear away any part of any standing crop, fence or jungle.

The new Section 3C provides that in the case of the whole of a survey number or sub-division of a survey number, the area entered in the land record would be deemed to be the measurement of the land comprising such survey number or sub-division.

The power to be exercised under S. 4(1) when the land is required 'for a public purpose' is extended to the acquisition of land 'for a company', and the power under S. 4(2) could also be exercised 'to measure the land likely to be needed'.

Section 8 is amended requiring the Collector to cause the land to be measured out only when it has not already been measured under Section 3A or 4 or deemed to be measured under Section 3C. Sub-section 2 of Section 9 is modified permitting the interested persons to state objections to the measurements made under Section 3A, 4 or 8 or deemed under Section 3C.

The proviso to Section 11 empowered the Collector to make award subject to the previous approval of the State Government and empowers the State Government to direct the Collector or any other officer who performs the functions of a Collector under the Act, to make award in the specified classes of cases without State Government's approval.

The new sub-section 2 of Section 11 enables the Collector to execute agreement with the persons who are agreeable to the award, without making further enquiries and the new sub-section 3 provides that the compensation so determined by way of agreement would not affect the determination of compensation in respect of other lands in the locality or elsewhere. The new sub-section 4 provides that such an agreement would not be liable to registration under the Indian Registration Act of 1908.

The following new Section 11A is inserted:

"11A. If the land in respect of which an award is made under Section 11 is land which according to the terms of its tenure is not transferable or partible by metes and bounds without the sanction of the State Government or any other competent officer, then out of the amount of compensation awarded therefor a sum, which would have been payable to the State Government under any law for the time being in force, had the land been otherwise transferred, shall be payable to the State Government and the Collector shall specify in the award the sum so payable to the State Government."

From Section 17 the words 'waste or arable' have been deleted so that possession of 'any land' could be taken under the Section.

The new S. 17A provides that the land acquired by the State Government or a Corporation owned or controlled by the State Government for a specified purpose could be used for any other public purpose with the previous sanction of the State Government.

By amending clause *fourthly* of Section 23 principle of compensation for injurious affection has been extended to the tenant of the land to the extent of the damage sustained by him as a result of acquisition, and a new principle *seventhly* is added requiring the consideration of market value of the land irrespective of the terms of the tenure of the land that it is not transferable or partible without the sanction of the State Government.

The rate of interest under S. 28 and S. 34 is fixed at 4½% per annum.

In S. 35 the words 'waste or arable' have been deleted so as to permit the temporary occupation and use of 'any land' thereunder when it is needed for a public purpose or for a company.

Section 39 is amended requiring the Government's previous consent and execution of agreement by the company before the provisions of Sections 4 to 37 (both inclusive) are put into force.

For the acquisition of land for companies, the Government is required to be satisfied under Sections 40 and 41 by making enquiries whether the land is required for the purposes mentioned in S. 40. The amendment has omitted reference to Collectors' report in both these sections for the Government to be satisfied of the purpose of acquisition.

The following sub-sections (2) and (3) have been substituted for Section 47 in its application to the State of Gujarat, in the new Section 47A.

"(2) If the Collector is opposed or impeded in taking possession under this Act of any land or in preventing enjoyment of any easement extinguished under this Act, he shall if a District Magistrate, enforce the surrender of the land to himself, or the closure of such easement and if not such Magistrate, he shall apply in any area for which a Commissioner of Police has been appointed to the Commissioner of Police and elsewhere to any Executive Magistrate and such Commissioner or

Magistrate shall enforce the surrender of the land to the Collector, or as the case may be, the closure of such easement.

(3) Any action taken by a Collector, Magistrate or Commissioner of Police under Sub-Section (2) shall not be questioned in any Civil Court and no injunction shall be issued by such Court for restraining such action, but the aggrieved party shall be entitled in such Court to reasonable compensation for any damage suffered by him by reason of the powers under this section being exercised by any such officer wrongfully or without authority."

The new Section 49A provides that the prohibition of S. 49 against the acquisition of only a part of the house, manufactory or other building when the owner has desired the acquisition of the whole of such house, manufactory or building would operate only when the Collector is satisfied that the part acquisition would affect adversely the use of the remaining part of the property. Further it is provided that it would be lawful for the Collector to acquire such part of the house, manufactory or building if the owner withdraws or modifies his desire that the whole of such house, manufactory or building should be acquired; however, such an acquisition should be in conformity with such withdrawal of modification.

Clause (2) of Section 50 is amended so as to make it obligatory for the local authority or the concerned company to appear and adduce evidence before the Collector or the Court, as the case may be, for the purpose of determining the amount of compensation.

The new sub-section (2) of Section 52A empowers the State Government to delegate its powers under the Act, except power to make rules, to any subordinate officer not below the rank of a Collector by specifying in the Gazette the circumstances and conditions for their exercise.

Haryana

The Land Acquisition Act, 1894 as amended by the Punjab Amendment Acts No. 15 of 1948, 2 of 1954, 17 of 1956, 47 of 1956 and 17 of 1962 (for the provisions of these Acts see under 'Punjab') is in force in the State. It has been further amended by the Haryana Amendment Act No. 8 of 1967. This amendment has modified Sections 28 and 34 raising the rate of interests payable under these Sections from 'four' to 'six' per centum per annum.

Jammu and Kashmir

The State (J. & K.) Land Acquisition Act, 1990 (1934 A.D.) (Act No. 10 of 1990) has identically adopted the provisions of the Central Land Acquisition Act, 1894. It has, however, made the following changes:—

In the definition of the expression 'Court', the words 'in a district' are added at the end of the words 'the principal Civil Court of original jurisdiction'. For the definition of the expression 'Collector' it has made reference to its definition in the Land Revenue Act, 1996 of the State. The new expression 'Revenue Minister' is defined as 'the Revenue Minister of the Council of Jammu and Kashmir State'. The definition of the expression 'appropriate Government' is not adopted since the Act used the expression "Government" instead. Married women have not been included in the expression 'persons entitled to act'.

The dispute under Section 5 is required to be referred to the Provincial Revenue Authority within 30 days of its pronouncement.

In Sections 6, 7, 17 and 35 the words 'or for a company' have been omitted.

The opening words 'subject to the provisions of Part VII of this Act' occurring in Sections 6 and 35 of the Central Act have not been adopted in the corresponding Sections 6 and 36 of the State Act.

The declaration under Section 6 is required to be signed by the Revenue Minister instead of the Secretary to the Government. The new proviso to Section 6 provides that the State can acquire property only when it is really wanted for State purposes and that no other plot except the one under requisition satisfies the requirements of the State. The proviso enables issue of declaration for the acquisition of property for any 'person or persons' also if the compensation to be awarded for such property is to be paid by such 'person or persons'; and sub-section 1 of Section 48, consequently, required such 'person or body of persons whether corporate or not' to bear the charges of, and incidental to, such acquisition.

The Revenue Minister is empowered to direct the Collector to take order for the acquisition of land under Section 7.

In sub-section 2 of Section 9 the time within which the persons interested could be required to state the nature of their interest etc., is raised to 30 days after the date of publication of notice under sub-section 1.

The reference to the date of publication of the notification under Section 4, sub-section 1 for making an enquiry into the value of land is omitted in Section 11.

The Collector can take possession of any waste or arable land under Section 17 only on the expiration of 30 days from the publication of notice under Section 9, sub-section 1. The sub-section 2 of Section 17 dealing with emergencies is omitted except the proviso which is made proviso to sub-section 1 instead.

The Collector is also required to mention in the statement to the Court under Section 19(1) 'the name of persons out of those interested in such land who have accepted the award'.

The clause *firstly* of sub-section 1 of Section 23 requires the taking into consideration the market value of the land at the date of the publication of the declaration under Section 6. The clause *seventhly* of Section 24 requires the disregarding of any improvement etc., made without the sanction of the Collector after the date of the publication of the declaration under Section 6.

The new Section 29 provides as follows:--

"Notwithstanding anything hereinabove contained the market value of the land to be acquired shall not form part of the amount of compensation to be awarded under this Act except to the extent of 1/3rd share thereof or enter into consideration except to that extent in assessing such compensation where the land to be acquired is situated in a place in which the land is owned directly by the Government as proprietor.

Sections 38 and 38A of the Central Act have been omitted and in Section 39 for the words 'Sections 6 to 37 (both inclusive)' the words 'Sections 6 to 35 (both inclusive)' have been substituted.

The Revenue Minister is empowered to appoint an officer and fix time and place for holding the enquiry under sub-section 2 of Section 40. Clauses (a) and (aa) of sub-section 1 of Section 40, clauses (4) and (4a) of Section 41 and Sections 43, 44, 44A, 44B and two provisos of sub-section 1 of Section 55 of the Central Act have been omitted. Unlike Section 54 of the Central Act, Section 52 of the State Act has not provided for appeal to the Supreme Court from any decree of the High Court passed on appeal in any proceedings under the Act.

The new Section 52A empowers the State Government to delegate its powers and duties under the Act to the Revenue Minister.

Kerala

(1) The Kerala Land Acquisition Act, 1961 (Act 21 of 1962):

The Act has consolidated and unified the law of land acquisition in the State of Kerala. The Act has mostly followed the provisions of the Central Act in force on the date of its enactment *i.e.*, excluding the Central amendments of 1962 and 1967, and has made the following significant changes:

The term "Collector" does not include Deputy Commissioner.

The expression 'public purpose' has not been defined. 'Married women' have been excluded from the expression 'persons entitled to act' and in the expression 'person interested' has also been included 'person entitled to claim' an interest in compensation. The Collector, in addition to appropriate Government, is empowered to issue Section 4 notification (*i.e.* S. 3 of the Act). In the relevant provisions (*i.e.*, Sections 5, 6 and 38 of the Act) the expression 'public purpose' are used for the expression 'public purpose, or for a company'. If the Section 4 notification is issued by the Collector, the Collector is required to submit the case to the Board of Revenue after hearing all objections and after making further enquiries under Section 5 (S. 5A of Central Act).

The Board of Revenue, in addition to the Government, is empowered to issue declaration under Section 6. Sub-section (3) of the Central Act of Section 6 which provides *inter alia* that the declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be, has been deleted.

The new sub-section 5 of Section 9 provides that the notice to interested persons shall also be published in the Gazette and when it is so published it shall be deemed to be sufficient notice to all persons interested in the land as between the Government and such persons.

Section 16 of the Act provided that the Collector must make an award in case of agreement between the Collector and the persons interested as to the amount of compensation. Such an award is required to be filed in the Collector's office and is a conclusive evidence of the value of the land and the amount of compensation allowed between the Collector and all persons interested.

Section 17 of the Act provides that the Collector should make the award only when the valuation statement is approved by the District Collector if the Collector making the award is not the District Collector, or by the Board of Revenue if the Collector making the award is the District Collector.

Section 18 empowers the Collector when he has made an award after an enquiry under S. 11 or by agreement with all persons interested under S. 16, to take possession of the land which will vest absolutely in the Government free from all encumbrances.

For taking possession of land in cases of urgency, the District Collector, in addition to the Government, is empowered to give direction to the Collector. Taking possession of 'any land' is provided for in cases of urgency. Sub-section 2 of Section 17 of the Central Act which empowered the Collector to enter upon and take possession of the land immediately after the notification when it becomes necessary for any Railway Administration to take immediate possession of the land for the maintenance of their traffic etc., owing to sudden change in the channel of any navigable

river or other unforeseen emergencies, has been deleted. However, the Government or the District Collector in giving direction under the section have to record in writing reasons for the taking of possession, and the Collector is required to give at least three days' notice (instead of 48 hours' notice under the Central Act) of his intention to take possession of any building or part of a building under this Section (Section 19 of the Act). The new sub-section 3 makes a provision for the payment of a sum not exceeding fifty per cent of the probable compensation by the Collector on the request of all the parties concerned interested and on furnishing security, but after making summary enquiry, as he thinks fit, and after satisfying himself that the parties are lawfully entitled to receive compensation. No such payment of compensation is to be made when there is dispute as regards the persons entitled to the compensation. Sub-section 4 empowered the District Collector, in addition to the Government, to direct that the provisions of Section 5 (Section 5A of the Central Act) would not apply to the case under this Section.

Sub-section 2 of Section 27 of the Central Act is omitted.

Sections 30 and 36 (28 and 34 of the Central Act) provides for payment of interest at the rate of four per centum per annum (as against 6 per cent in the Central Act).

Section 16 of the Act under which the Collector is empowered to make award if all the interested persons agree as to the amount of compensation has been referred in Sections 32 and 33 (Ss. 30 and 31(1) of the Central Act).

Section 37(1) provided for procuring the temporary occupation and use of 'any land' for a period not exceeding five years from the commencement of occupation (as against three years in the Central Act). Sub-section 3 provides that the compensation payable for such occupation and use has to be equal to the rent which the land could normally fetch if leased, together with five per centum of such rent as solatium.

The new clause (c) of Section 43(1) (Section 40(1) of the Central Act) adds a new condition which is to be satisfied of before giving consent to acquisition of land for a company, as follows:

"that such acquisition is needed for a purpose calculated to promote and develop agriculture, industry or co-operation."

Section 43 and 44 of the Central Act is omitted.

A new Part VIII entitled 'Acquisition of Land for Projects' is added. The provisions of this Part apply to the projects which may be specified by the Government by notification. Section 48 provides that the provisions of the Act would apply to the proposed acquisition of land in a project area for a project purpose subject to the following modifications:—

- (i) Section 11 of the Act is modified requiring the Collector to enquire into the market value of the land on the date of the sanction of the project concerned and the value of any improvement to the land effected after the date of the sanction of the project and before date of publication of Section 4 (Section 3 of the Act) notification.
- (ii) The new Clause first of Section 25(1) (Section 3(1) of the Central Act) provided for taking into consideration the market value of the land on the date of the sanction of the project concerned and the value of any improvements to the land affected after that date and before the date of the publication of the notification under sub-section (1) of Section 3 (sub-section (1) of Section 4 of the Central Act) or the market value of the land on the date of publication of the said notification, whichever is less.

NOTE.—Sections 46 to 48 have been substituted by the Act No. 41 of 1966—see below.

41—1 M. of F. & A./70

Section 54 enables the officer appointed by the Government to perform functions of a Collector under the Act, to continue the proceedings from the stage at which the Collector who started the proceedings left it, as if the proceedings had been started by him.

Section 58 empowers the Government to appoint Land Acquisition Courts at any place in the State. It provided that the judge of the court must not be below the rank of a Subordinate Judge and that these courts would have such territorial and pecuniary jurisdiction as may be notified by the Government. Further, it enables the vesting of the jurisdiction of the Land Acquisition Court in any Civil Court not lower in rank to that of a Subordinate Judge's Court.

Section 60 makes provision for appeals from the award of the Court as if the award is a decree passed by a civil court under the provisions of the Code of Civil Procedure and subject to rules prescribed, if any.

(ii) The Kerala Act No. 4 of 1966

The Act has adopted the provisions of the 1962 amendment to the Central Act except that the following words are added at the end of clause (aa) of sub-section 1 of Section 43 (S. 40 of the Central Act):

"and that the building or work which such company is intending to construct is meant to subserve the public purpose of the industry or work for which it is being constructed, or."

It has further made the following changes in the Principal Act.

The new proviso to Section 6(1) provides that declaration cannot be made in respect of a land after the expiry of a period of two years from the date of the publication of Section 4 notification (S. 3 of the Act) and the new sub-section 3 provides that if no declaration is issued within this period the Section 4 (Section 3 of the Act) notification would be deemed to have been cancelled.

Section 46 to 48 of the Principal Act which deal with the acquisition of land for projects are substituted by the following provisions:

The new Section 47A empowers the Government to specify the 'project area' when it is of opinion that as a result of a project undertaken or proposed to be undertaken by them, there is likelihood of a speculative rise in the land value in the 'project area'. Section 46 enables the Government to apply the provisions of this Part (i.e. VII of the Act) to the 'project area' specified under Section 47A, provided that Section 4 notification (S. 3 of the Act) is published within three years from the date of the publication of the notification under Section 47A.

The new Section 11 requires the Collector to enquire also into the value of the land at the date of the publication of the notification under Section 47A, the value of any improvements to the land effected after the date of the publication of notification under Section 47A and before the date of the publication of Section 4 (Section 3 of the Act) notification, and the normal rise in land value in the locality in which the project area lies after the publication of the notification under Section 47A and before the date of the publication of Section 4 (Section 3 of the Act) notification.

The new clause first of Section 25 (Section 23 of the Central Act) provides for taking into consideration:

"(a) the market value of the land at the date of the publication of the notification under Section 47A, the value of any improvements to the land effected after that date and before the date of the publication of the notification under sub-section (1) of Section 3, and, where there has been a normal rise

in land value in the locality in which the project area lies after the date of the publication of the notification under Section 47A and before the date of the publication of the notification under sub-section (1) of Section 3, such rise in price subject to a maximum of twenty per cent, of the market value of the land at the date of publication of the notification under Section 47A, or

- (b) the market value of the land at the date of the publication of the notification under sub-section (1) of Section 3, whichever is less."

The Kerala Land Acquisition (Amendment and Validation) Act, 1968 (Act 29 of 1968)

Amendment of S. 5.—The Act amends Section 5(2) of the Act 21 of 1962 and provides that the Collector should make a report or different reports in respect of the land or different parcels of such land for which notification has been issued, under Section 3 of the Kerala Act (corresponding to S. 4 of the Central Act) together with his recommendations on objections and the record of proceedings for decision to the Government where notification was issued by the Government and to the Board of Revenue where notification was issued by him.

Amendment of S. 6.—Sub-Section (1) of Section 6 has also been amended to provide for issue of different declarations from time to time in respect of different parcels of land covered by the same notification irrespective of the fact whether one or different reports had been made under Section 5(2) provided no declaration shall be made after expiry of two years from the date of publication of such notification. The sub-section 3 of Section 6 has been amended to provide that where no declaration is issued within the aforesaid period, the notification shall be deemed to have been cancelled on the expiry of the period in respect of such land or portion thereof. **Validation (a).** The Amending Act further provides that acquisition of land and action taken, things done including any orders, agreements, notifications issued under the principal Act, before the commencement of the Amending Act would not become invalid or deemed to be invalid on the following grounds:—

- (i) that one or more Collector have performed the functions of the Collector in respect of the land covered by the same notification.
- (ii) that one or more reports have been made in respect of the entire land or different parcels thereof covered by the same notification.
- (iii) that one or more declarations have been made under Section 6 in respect of different parcels of land covered by the same notification in pursuance of one or more reports made under Section 5.

(b) The Amendment Act also validates any acquisition after the commencement of the Amending Act in pursuance of notification issued before the commencement of the Amending Act. It further provides that any such acquisition and action taken or thing done including any order made, agreement entered into or notification published whether before or after the commencement of Amending Act in connection with such acquisition shall not be deemed to be invalid on any of the grounds referred to in (a) above.

Notwithstanding anything in (b) above no declaration under Section 6 in respect of the land covered by notification published under Section 3(i) of the principal Kerala Act (S. 4 of the Central Act) before the commencement of the Amending Act shall be made after expiry of two years from the date of publication of such notification.

Madhya Pradesh

The Land Acquisition Act, 1894, as amended by the Central Acts and by the C.P. and Amendment Acts Nos. 27 of 1939, 7 of 1949 and 28 of 1949 and M.P.

amendment Act No. 43 of 1965, is in force in the State.

(i) The C.P. & Berar Act No. 27 of 1939

Sections 28 and 34 have been amended to provide that the rate of interest shall not be less than three per centum and more than six per centum.

(ii) The C.P. & Berar Act No. 7 of 1949

The new sub-section 3 of Section 18 provides that "any order made by the Collector on an application under this Section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, 1908."

(iii) The C.P. & Berar Act No. 28 of 1949

Sub-section 2 of Section 17 has been amended to extend the emergency provisions of the sub-section to the following:

"whenever owing to a like emergency it becomes necessary for the State Government to acquire the immediate possession of any land for the purpose of maintaining traffic over a public road."

(iv) The M.P. Act No. 5 of 1959

The Act provides for amending the Land Acquisition Act, 1894 as in force in the State of Madhya Pradesh in its application to Bhopal area comprised within the Municipal limits of Bhopal town and the area extending upto ten miles beyond such limits. The following amendments have been made:

The new Section 17A empowers the State Government to direct the Collector to acquire immediate possession of any building site, together with the building, if any, standing thereon, situated in Bhopal area, whenever it considers it urgently necessary. It is further provided that on giving of such direction the provisions of Section 17 would apply in the case of such site as they apply in the case of waste or arable land. However, the Collector is required to give two months' notice of his intention to the occupier before he takes possession of any building or part of a building under this section so as to enable the occupier to vacate the building without unnecessary inconvenience.

The following new proviso to clause *firstly* of Section 23(1) is added:

"Provided that when the market value of any land situated in Bhopal area, in respect of which the date of publication of the notification aforesaid is after the commencement of the Land Acquisition (Madhya Pradesh) Act, 1957 (21 of 1958), is in excess of its market value as on the first day of October, 1955, the market value thereof shall be deemed to be its market value as on the first day of October, 1955."

The new sub-section (3) provides that where the market value of any land situated in Bhopal area is determined in accordance with the above said proviso, then in addition to such market value and the amount of solatium payable under sub-section (2), the Court must award a further sum not exceeding twenty five per centum of such market value as may be deemed fit in consideration of the appreciation in the price of the land concerned by reason of the location of the Capital at Bhopal, keeping in view the situation of such land.

NOTE.—The High Court of Madhya Pradesh in *Satish Kumar v. State of M.P.* (AIR 1961 M.P. 280) has upheld the validity of this amendment under Articles 31(2) and 14 of the Constitution.

(v) The M.P. Act No. 43 of 1965

In the expression "company" in Section 3(e) have been included "a registered society within the meaning of clause (b) of Section 2 of the Madhya Pradesh Societies Registration Act, 1959 (1 of 1960), and a society within the meaning of clause (2) of Section 2 of the Madhya Pradesh Cooperative Societies Act, 1960 (17 of 1961)."

Maharashtra

The Land Acquisition (Maharashtra Extension and Amendment) Act, 1964 (Act 38 of 1964) has extended the Central Act duly amended by Bombay Acts No. 18 of 1938, 20 of 1945, 35 of 1949, 27 of 1950, 35 of 1953, 8 of 1958, 12 of 1958 and the Maharashtra Act No. 38 of 1964. The Act has been further amended by the Maharashtra Act No. 24 of 1965. The Bombay Act No. 4 of 1948 was to be in force in Bombay area of the State for 10 years ending with 17th March, 1958.

(i) The Bombay Act No. 18 of 1938

The Act has reduced the interest rate payable under Sections 28 and 34 to four per centum from six per centum.

(ii) The Bombay Act No. 20 of 1945

The new Part 1-A (Ss. 3A and 3B) enabled the Government officials to enter upon the land and make preliminary survey of the land proposed to be acquired, as in S. 4(2), even before the notification under Section 4 is issued, by giving at least seven days notice and provides for the payment of compensation for the damage done to the land in the process and for referring the dispute over compensation, if any, to the Collector or other Chief Revenue Officer of the District.

Changes in Section 45 and 46 have been made to bring Section 3A on par with Section 4 in respect of service of notice and imposition of penalty for obstructing the process of making preliminary surveys.

(iii) The Bombay Act No. 4 of 1948

This Act was in force for ten years upto 17th March, 1958 in the Bombay area of the State. The Act included a housing scheme in the definition of 'public purpose'. It omitted provision relating to the payment of 15% solatium for acquisition of land for housing scheme and provided for payment of compensation on the basis of market value as on the date of notification under Section 4 or on 1st January, 1948 whichever was less.

~~Note~~—This Act was struck down by the Supreme Court in *M. B. Jeejeebhoy v. Asst. Collector, Thana* (1965 (1) SCR 636) on the ground that it contravened the express provisions of Sec. 299 of the 1935 Act.

(iv) The Bombay Act No. 35 of 1949

Apart from providing for validation of certain land acquisitions made by officers who were not appointed as Collectors under S. 3(c) or were not directed to take orders for their acquisition under S. 7, the new S. 52A enabled the Collector to delegate his powers and functions under the Act, subject to Government's Orders, to any officer not below the rank of Mamlatdar or a special Band Acquisition Officer appointed by the Government.

(v) The Bombay Act No. 27 of 1950

The Act provided that in S. 3 'arable land' includes 'garden land'.

(vi) The Bombay Act No. 35 of 1953

It has provided for the inclusion of a Civil Judge (Senior Division) to which the Principal Civil Court

may transfer any proceedings under the Act in the expression 'court' in Section 3(d) and included the following in the expression 'public purpose' in Section 3(f):

"the acquisition of land for purposes of the development of area from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part of lease, assignment or sale, with the object of securing further development."

The power of the Collector to make award under Section 11 is subjected to the prior approval of the State Government. The new Section 12A enables the Collector to correct *suo motu* or on an application from interested person any clerical or arithmetical mistakes in an award or any error resulting from accidental slips or omissions, before the expiry of six months from the date of the award and to recover any overpayment disclosed by the amended award by giving notice immediately after the award or before the expiry of time allowed for making reference to the court and in case the amount is not refunded within one month of the date of the receipt of the notice, to recover it as an arrear of land revenue after the expiry of that period. The new Section 13A empowers the Government to call for and examine the record of any order, inquiry or proceedings of the Collector with a view to satisfying itself about legality or propriety of the orders and regularity of the proceedings and, wherever necessary, to pass order for the modification, amendment and reversal of the order or proceedings.

The power of taking possession of land in cases of emergency under S. 17 has been extended to breaches and other unforeseen events causing damage to roads, rivers, channels or tanks with a view to maintaining road communication or irrigation or water supply services. Three new sub-sections have been added to S. 35 which enable the State Government to require the Collector to submit plan of the land and an estimate of the compensation payable, after the Government is satisfied that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a company. The Collector has to cause public notice of the substance of the acquisition, and any officer authorised by the Collector can exercise the powers under S. 4(2). Such officer must pay at the time of his entry or tender payment for all damage to be done and in the case of dispute over the amount to be paid the decision of the Collector thereon is final.

The acts and works done under Sections 3A and 35 have also been included in Section 46.

(ii) The Bombay Act No. 20 of 1945

The Act by amending proviso to Section 11 of the Central Act empowers the Commissioner to accord approval to an award of compensation not exceeding one lakh of rupees in respect of compensations awarded under certain enactments abolishing land taxes.

It also enables the Commissioner, in addition to the appropriate Government, to specially appoint any officer to perform the functions of a Collector under the Act, by amending cl. (c) of Section 3 of the Principal Act.

The new Section 2-A made the powers of the Commissioner under the Act co-extensive with that of the State Government relating to the acquisition of land.

The Act confers the powers of the State Government/appropriate Government on the Commissioner, under Sections 3A (authorising officers to make preliminary survey etc.), 4(1) & (2), 6(1), 17(1) (2) & (4) (special powers in cases of urgency) and 48(1) & (2) (powers of withdrawal from acquisition).

(viii) The Bombay Act No. 12 of 1958

The Act by amending proviso to Section 11, empowers the Collector to make the award of compensation not exceeding the amount specified by the Government by general order, without obtaining the previous approval of the State Government or any other officer appointed for the purpose. Under the proviso, before this amendment, the Collector was required to obtain previous approval of the State Government or any other officer appointed for the purpose, for every award of compensation.

(ix) The Bombay Act. No. 17 of 1960 (now repealed)

For acquiring land for the purpose of setting up a township for a new capital of a State Government or for developing a headquarter of a State Government, the Land Acquisition Act, as in force in the State of Bombay is applied with the following changes made therein.

Under Section 11 the Collector is required to take into consideration the value of land 'at the first day of July, 1959' in addition to the value on the date of the publication of notification under Section 4(1)

Section 23 clause *firstly* is amended as follows:—

"the market value at the date of the publication of the notification under Section 4, sub-section (1) or at the first day of July, 1959, whichever is less".

The existing clauses *secondly* to *sixthly* have been renumbered as (3) to (6) and the following is inserted as clause (2).

"the use to which the land was put at the date of such notification."

In clause *fourthly* of Section 24 for the words 'declaration under Section 6' the words 'notification under Section 4, sub-section (1)' have been substituted, and the following have been added as clauses (8) and (9):

"(8) the special suitability or adaptability of land for any purpose, if that purpose is a purpose to which it could be applied in pursuance of any law, or for which there is no market apart from the special needs of the State Government:

(9) any increase in the value of land by reason of the use thereof or any premises thereon in a manner which could be restrained by any court, or is contrary to law or is detrimental to the health of the inmates of the premises or to the public health."

NOTE.—This Act is repealed by the Bombay Act No. 38 of 1964.

(x) Maharashtra Act No. 38 of 1964

The Act amended Section 18 of the Central Act to provide that the order made by the Collector under Section 18 *i.e.*, on the objections to the award, would be subject to revision by the High Court in the same way as if the Collector were a court subordinate to the High Court. However, it is provided that the meaning of the expression 'Court' in Section 3(d) would not apply to the Collector.

(xi) The Maharashtra Act No. 24 of 1965

In Section 3(aa) the expression 'arable land' is defined as the 'land fit for cultivation whether in fact cultivated or not; and includes garden land'.

The new Explanation to Section 6 provided that when the State Government provides funds, either by

loan, grant or otherwise to the company owned or controlled by the State, for the purpose of paying compensation, such compensation must be deemed to have been paid out of public revenues.

Further, in the Explanation to S. 17 it is provided that when the direction is given by the Government or Commissioner to the Collector to take possession, in cases of urgency under S. 17(1), of any waste or enable land, it would not be necessary to state separately which lands are waste and which are arable.

[Mysore

The Land Acquisition (Mysore Extension and Amendment) Act, 1961 (Mysore Act No. 17 of 1961) has extended the Central Act as in force on the 16th August, 1961 to the whole of the State with the changes made by the Mysore Act No. 17 of 1961. This has been further amended by the Mysore Act No. 10 of 1968.

(i) The Mysore Act No. 17 of 1961

Garden lands have been included in the expression 'arable land' in S. 3 so that the power of temporary occupation under Sections 17 and 35 may be exercised in respect of these lands. The expression 'Deputy Commissioner' (and not the Collector) is defined identically into the definition of Collector in the Central Act. Further, an Assistant Commissioner in-charge of a sub-division of a District has been included in the expression 'Deputy Commissioner'. The following definition of the expression 'Court' has been substituted:—

"The expression 'Court' means a Principal Civil Court of original jurisdiction and includes any other Civil Court empowered by the State Government by notification in the official gazette to perform the functions of the Court under this Act, within the pecuniary and local limits of its jurisdiction."

The scope of the word 'company' is extended to (i) a company formed and registered under the Companies Act, 1956, (ii) a company formed and registered under any previous company law for the time being in force in any part of India other than the State of Jammu & Kashmir, (iii) a company formed and registered under any law for the time being in force in any part of India other than the State of Jammu & Kashmir, (iv) a company (a) incorporated under any law relating to companies for the time being in force in any foreign country and (b) having its principal place of business in India, (v) a company incorporated by an Indian Law relating to a particular company, (vi) a cooperative society', (vii) a society registered under the Societies Registration Act, 1960 or under any law corresponding to that Act for the time being in force in any part of India, and (viii) a corporation created by or under any law for the time being in force in any part of India not being a corporation owned or controlled by the State.

The following items have been included in the expression 'Public Purpose' in Clause (b) of S. 3:

(i) the provision of village sites; (unlike the provision in the Central Act and the Law Commission's draft Bill it has dispensed with the making of a declaration that it is customary for the Government to provide such a site.)

(ii) the provision of land for planned development from public funds and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

¹. A society registered with in the meaning of the Cooperative Societies Act, 1912 (or registered or deemed to be registered under any law corresponding to that Act for the time being in force in any part of India. (S.6(4) of the amending Act).

- (iii) the provision of land for town or rural planning under any law relating to such planning;
- (iv) the provision of land—
 - (a) for carrying out any housing scheme or health scheme sponsored by the Central Government or any State Government or a local authority; or
 - (b) for clearing slum areas; or
 - (c) for relieving congestion; or
 - (d) for housing poor, landless, or displaced persons or persons residing in areas affected by floods;
- (v) the provision of—
 - (a) residence for any person holding an office of profit under the Central Government or a State Government, or accredited as a diplomatic consular or trade representative of a foreign Government;
 - (b) building for locating a public office;
- (vi) the provision of land for corporations owned or controlled by the State, or other nationalised industries or concerns;
- (vii) the provision of land for any local authority and subsequent disposal thereof in whole or in part, by lease, assignment or outright sale with the object of securing further development;
- (viii) the provision of land for a company,—
 - (a) where the land is needed for the construction of some work and such work is likely to prove substantially useful to the public, or
 - (b) where the land is needed by a building cooperative society or corporation for the construction of houses;
- (ix) the provision of land for any charitable trust.²

Explanation.—“Charitable trust” includes a trust established or to be established for the relief of the poor, education, medical relief or advancement of any other object of general public utility;

A town country planning authority and a city improvement trust board are included in the expression ‘local authority’ in clause (g) of S. 3.

Section 4 is amended to enable ‘Deputy Commissioner’ to exercise the power of the ‘appropriate Government’. Also it provided for specifying in the notification the description of the land by its survey number and its boundaries and approximate area. It is made obligatory to serve a copy of the notification on the owner or the occupier of the land and to specify the date, *not being less than thirty days* from the date of publication of the notification, on or before which and the manner in which objections to the proposed acquisition may be made under S. 5A.

In the case of acquisition for a company the officer of the company can be authorised to exercise powers under sub-section 2, *i.e.*, of entry, surveying, taking levels, ascertaining the adaptability of land for the purpose of acquisition, boundaries etc. The work of making these investigations and submission of report is required to be completed within *three months* (extendable to six months) from the date of the notification; and thereafter the Deputy Commissioner has to submit the report to the appropriate Government with his remarks.

Section 5A is amended to provide for filing objections together with the grounds thereof within a period specified in the notification, which is *not to be less than*

thirty days (as against the Central Act’s provision for filing objections *within thirty days*) after the issue of the notification under Section 4. The Deputy Commissioner is required to submit report to the appropriate Government before *six weeks* from the last date fixed for filing objections or before *two weeks* from the date on which survey and investigation officer’s report under S. 4(4) is received, whichever is later. He is also required to communicate to the objectors his recommendations to the Government on the objections. In case of sufficient cause for the delay, the Government is empowered to condone any delay in the submission of report by the Deputy Commissioner, upto *one year*.

The sub-section 1-A of Section 6 provided for submitting a second report by the Deputy Commissioner as to the marking out, measurement and making of plans of lands, after the Government is satisfied that any particular land is needed for a public purpose, and before the making of a declaration to that effect. The declaration of the Government is required to contain description, situation and area etc., of the land and the place where plan of the land may be inspected. Consequently Section 8 of the Central Act has been omitted.

(This amendment adopted the recommendations of the Law Commission).

Section 9 is amended to provide for the furnishing of particulars *inter-alia* of the basis on which compensation is claimed, by the persons who claim compensation in pursuance of the notice under S. 9 and to require service of notice on the occupier of the land and other persons who have interest in the land under S. 9(3) *at least 15 days* before the date on which they are to appear before the Deputy Commissioner.

Deputy Commissioner’s power to make award of compensation under S. 11 has been subjected to the previous approval of the State Government or other officer appointed in this behalf, who may be a Deputy Commissioner if the award is to be made by an officer below the rank of the Deputy Commissioner.

Section 12 is amended to provide that the Collector’s award would be final and conclusive evidence subject to the provisions of Section 15A; and to require the Deputy Commissioner to give immediate notice of his award or any amendment made thereto under Section 12A to the persons interested.

The new Section 12A enables the Deputy Commissioner to correct *suo motu* or on the application of the interested person any clerical or arithmetical mistakes in an award or any error arising therein from accidental slips or omissions, before the expiry of six months from the date of the award by giving notice immediately after the award or before the expiry of time allowed for making reference to the Court, and in case the amount is not refunded within one month of the date of the receipt of the notice by the person concerned, to recover it as an arrear of land revenue after the expiry of that period.

The new S. 15A empowers the State Government, before an award is made by the Deputy Commissioner, to call for and examine the record of any order passed by or any inquiry or proceedings of the Deputy Commissioner for the purpose of determining its legality, propriety or regularity. The Government can, if necessary, order modification, annulment or reversal of Deputy Commissioner’s orders or proceedings.

². Items (iii) to (ix) are the same as were recommended by the Law Commission in its draft Bill at pp. 54-55 of their report except that the following clause (in italics) of the Law Commission’s Bill (in items VIII and IX) has not been adopted:—

The provision of land for a company/cooperative society—

“for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith.”

This omission appear to have been off set by providing in clause (vii) (b) that “where the land is needed by a building cooperative society or corporation for the construction of houses” it is a public purpose. (The words in italics have been added to the clause recommended by the Law Commission).

The new sub-section 2 of Section 16 require the Deputy Commissioner to notify the fact of taking the possession and provides that such notification would be evidence of such fact.

The new Explanation to S. 17 enables the taking of possession in cases of emergency of any waste or arable land even if scattered trees or temporary structures like huts, pandals or sheds are situated on it. Clause 2 is amended to provide for taking of immediate possession of land under it whenever owing to a sudden change in the channel of any navigable river or owing to breaches or other unforeseen events causing damage to roads, rivers, channels or tanks, it becomes necessary to acquire immediate possession of any land for the purpose of maintaining road communication or irrigation or water supply service, as the case may be.

(This amendment of S. 17(2) adopted the recommendation of the Law Commission vide S. 32 of their draft Bill).

The new proviso to S. 18(2) prescribes a period of 90 days from the date of the notice of award, in all cases, for filing application before the Deputy Commissioner stating the grounds of objections to the award. Clause 3 is added requiring the Deputy Commissioner to make reference to the Court within 90 days from the date of the receipt of the application, and if the Deputy Commissioner fails to make the reference within that time, the applicant can apply to the court to direct the Deputy Commissioner to make the reference, whereupon the court would direct the making of reference within the time as may be specified by the Court.

Sub-section 2 of Section 19 is amended to require the Deputy Commissioner to state also 'any other information available with the Deputy Commissioner relating to the matters referred to the Court' in making the reference.

Section 20 is amended to require the court to specify in the notice the day on which it will proceed to 'determine the reference', and for clause a, b and c of the section the following have been substituted:

- "(a) the Deputy Commissioner;
(b) all persons interested in the reference; and
(c) if the acquisition is not made for Government, the person or authority for whom it is made."

Section 24 is amended so as to limit the applicability of the principle of exclusion *seventhly* to the improvements etc., other than those that were necessary for the maintenance of any building in a proper state of repair. Further, it has added an eighth principle of exclusion, as under:

"Where the market value of the land acquired is increased by reason of the use thereof in a manner which may be restrained by any court or is contrary to law or is detrimental to the health of the inmates of the premises, or public health, the amount of that increase".

(These two amendments to S. 24 carried the recommendations of the Law Commission vide S. 22 of their draft Bill).

Sub-section 2 of Section 26 is amended applying the provisions of the Code of Civil Procedure relating to execution, to the execution of award except that the execution against the Government or any officer thereof cannot issue unless the award remained unsatisfied for a period of ninety days from the date of award.

Section 28 and 34 have been amended to fix the rate of interest on the amount of compensation at 5% per annum instead of 6% per annum.

The new Section 30A requires the court to apportion the amount of compensation according to the interest of each of the several persons interested and to specify the amount due to each of them in the award. Each of such person is given the right to obtain execution of the award to the extent of the amount due to him without the consent or concurrence of the other persons.

The new sub-sections 1A, 1-B and 1-C of Section 35 requires the Deputy Commissioner to submit the plan of the land needed and an estimate of the compensation, and to cause the public notice of the substance of the requisition to be given, before the Government issued direction to the Deputy Commissioner to procure the temporary occupation and use any waste or arable land under S. 35(1). After the issue of such notice the officer authorised by the Deputy Commissioner or his servants and workmen could exercise the powers conferred by sub-section 2 of Section 4. Such an officer is required to pay or tender payment at the time of his entry for all necessary damage to be done, and to refer to once to the Deputy Commissioner, whose decision would be final, the dispute as to the sufficiency of the amount so paid or tendered.

The new Section 37A, which is an exception to Section 35, empowers the Deputy Commissioner to procure temporary occupation and use of any waste or arable land when it is needed for the purpose of affording accommodation or other relief to persons displaced owing to damage caused to their dwelling houses or other buildings by fire, flood or other unforeseen events for a period of one year. The Deputy Commissioner is required to make a report of the taking of such possession of land and the reasons therefor to the State Government. Thereafter the Deputy Commissioner has to give notice of such occupation and use, and the period for which the land would be occupied and used, to the interested persons in such land and pay the compensation as may be agreed between them and the Deputy Commissioner. If there is no agreement as to compensation the Deputy Commissioner has to refer the matter to the Court. After the expiry of the period specified for temporary occupation and use, the land must be restored to the interested persons.

Section 45 is substituted by the following:

"45. Service of notices.—(1) Subject to the provisions of this section and any rules that may be made under this Act, the mode of service of notices issued under this Act shall be as follows:—

- (a) A notice of a general nature or affecting a class of persons shall be published,—
- (i) in the Official Gazette or any newspaper published in Kannada or English and in circulation in the District in which the land concerned is situated, and
- (ii) by affixing copies of the notice in prominent places on or near the land concerned;
- (b) A notice affecting an individual corporation or firm shall be served in the manner provided for the service of summons under rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, of the First Schedule to the Code of Civil Procedure, 1908;
- (c) A notice affecting an individual person (not being a corporation or firm) shall be served in the manner provided for the service of summons in the Code of Civil Procedure, 1908, or by sending it by registered post under a letter addressed to the person named therein at his last known residence, address or place of business, and the notice shall be deemed to be served on such person on the date on which the notice sent by registered post will, in the usual course of post, be received by the addressee.

(2) Where the ownership of the land is in dispute or where the persons interested in the land are not readily traceable and the notice cannot be served without undue delay, the notice may be served by publishing it in the Official Gazette, where possible, by affixing a copy thereof at any conspicuous part of the land to which it relates."

Penalty for obstruction in acts and works done under sub-section (1-A) of Section 6 and Section 35 respectively have also been included in Section 46.

In Section 50 the following sub-sections have been inserted:

"(1-A) If the charges of land incidental to such acquisition is not defrayed from such funds by a local authority after such time as may be fixed by the State Government, the State Government may by order direct the person in custody of such fund to pay the amount due in priority to any other charge against such fund and such person shall, notwithstanding anything contained in any law, so far as the fund to the credit of the local authority admit, be bound to comply with such order.

(1-B) without prejudice to any other mode of recovery from any company liable to defray the charges of and incidental to such acquisition, the amount payable by the company may notwithstanding anything contained in any law, be recovered from the company as an arrear of land revenue.

Section 54 is amended to restrict the right of appeal to the High Court to the case where the amount or value of the subject matter in dispute in appeal exceeds two thousand rupees or where the case involves any question of title to land.

(H) The Mysore Act No. 10 of 1968

The Act has amended Section 6 and validated previous declarations made thereunder, on the lines of the Central Amendment Act of 1967, except that it has omitted the words "irrespective of whether one report or different reports has or have been made (wherever required) under Section 5A, sub-section 2", and provided in the Explanation that the period during which any action or proceeding to be taken in pursuance of the notification under sub-section (1) of Section 4 is held up on account of stay or injunction by order of a court should be excluded in computing the period of three years specified in the sub-section.

Nagaland

There being no Act in force in all parts of Nagaland enabling acquisition and requisition of land for public purposes, the State has enacted a consolidatory Act entitled 'The Nagaland Land (Requisition and Acquisition) Act, 1965, providing for acquisition and requisition of land and buildings for certain public purposes after payment of suitable compensation. Consequently, the Land Acquisition Act, 1894 has ceased to apply in the State of Nagaland except as otherwise provided in the Act.

In this Act, the Central definitions of the expressions 'Collector', 'Land', and 'person interested' have been adopted. However, it is provided in the Explanation that the 'Land' for the purpose of the Act includes trees, buildings, and standing crops on it, and easement.

The expression 'Court' is defined to mean the following:-

"a Principal Civil Court of original jurisdiction and includes the Court of any Additional Deputy Commissioner, Assistant to the Deputy Commissioner whom the State Government may appoint, by

name or by virtue of his office, to perform, concurrently with any such Principal Civil Court, all or any of the functions of the Court under this Act within any specified local limits".

Three new expressions 'displaced person', 'owner' and 'prescribed' have been defined as under:

"displaced person" means—(i) any person, who on account of Civil disturbances or the fear of such disturbances in any area now forming part of Nagaland has been compelled to leave his original or ordinary place of residence in such area after the 15th day of August, 1947 and is in distress, or, (ii) a person who has been displaced due to various acquisition proceedings relating to land in Nagaland since 1947;

"owner" means proprietor or Patta holder and his co-sharer; and

"prescribed" means prescribed by rules made under this Act.

The definition of the expression 'public purpose' has not been given. However, Section 9(1) read with Section 3(1) provides for the speedy acquisition of land specifically for the following purposes only:

- (1) Public works;
- (2) Other development measures;
- (3) for maintaining supplies and services essential to the life of the community;
- (4) for providing proper facilities for accommodation, transport, communication, irrigation, flood control, and anti-erosion measures including embankment and drainage; or
- (5) for providing land individually or in groups (a) to landless, flood affected or displaced persons, or (b) to a society registered under any law for the time being in force, or a company incorporated under any law for the time being in force formed for the benefit and rehabilitation of landless, flood affected or displaced persons.

Section 9 provides only for the speedy acquisition of land by an order in writing made by the State Government or the Collector stating the area and boundaries thereof where in the opinion of the State Government or the Collector it is necessary or expedient to acquire speedily any land for the purposes mentioned above. Thereupon the Collector is required to cause the order served on the owner of the land and also on the tenant or the occupant in cases where he is not in occupation of the land. He is also required to serve a notice stating that claims to compensation for all interest in the land may be made to him within the specified time. If the person to be served is not readily traceable or the ownership of the land is in dispute, the Collector is required to cause the order and notice published in the prescribed manner.

Section 10 provides that when an order of acquisition is served or published as above, the land would vest absolutely in the State Government free from all encumbrances on the date the order is so served or published; and on such vesting, the order of the acquisition passed is required to be published in the Official Gazette in the prescribed manner. The Collector is empowered to proceed to take possession of the land on its becoming so vested.

In determining the amount of compensation Section 11(1) required the Collector to take into consideration the market value of the land for a period of five years preceding the date of passing the order of acquisition under Section 9(1) and it is provided that the amount of compensation payable would be on the basis of the average market value so arrived at. Further, in sub-section (2) it is provided that when the compensation has been determined as stated above, the Collector should make an award as laid down in Section 11

of the Land Acquisition Act, 1894 and should not include therein the amount of solatium referred to in sub-section (2) of Section 23 of that Act.

Section 12 requires the Collector to refer the matter for the decision of the Court where any person aggrieved by the award makes an application requiring the matter to be referred to the Court. Further, it is provided that the provision of the Land Acquisition Act, 1894 would apply *mutatis mutandis* subject to the provisions of this Act, in respect of any such reference made to the Court.

Section 13 provides for payment or depositing the amount of compensation within thirty days from the date of the award otherwise the Collector is required to pay the amount awarded with interest thereon at the rate of 6 per cent per annum from the date of the award until it is paid or deposited.

Section 14 provides *inter alia* that after taking possession of land, no land revenue would be payable and land revenue if any paid in respect of such period would have to be refunded.

For the purpose of determining the amount of compensation by the Collector Section 15 has empowered the State Government to:

- (a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the property as may be specified;
- (b) direct that the owner or occupier of the land shall not dispose of it or alter it without permission from the Government till the expiry of such period as may be specified in the order;
- (c) authorise any person to perform in respect of any land all or any of the functions referred to in sub-section (2) of Section 4 of the Land Acquisition Act, 1894.

Section 16 provides that if any person contravenes any order made under this Act he would be punishable with imprisonment for a term not exceeding one year or with fine not exceeding two thousand rupees or both.

Section 17 provides that any decision or order made under the Act cannot be called in question in any Court, except as expressly provided in this Act.

Section 18 has barred any suit, prosecution or other legal proceeding against any person for anything done or intended to be done in good faith under this Act or any rule or order made thereunder. Similar immunity is given to the State Government, except as expressly provided in the Act for any damage caused or likely to be caused by anything done in good faith or intended to be done under this Act or any rule or order made thereunder.

Orissa

The Land Acquisition Act, 1894 is in force in the State. The Orissa Amendment and Validation Act, 1959 (Act No. 19 of 1959) has made the following changes in the Act.

The words 'waste or arable' have been deleted from sub-section 1 of Section 17 so that the acquisition of any land could be made in cases of urgency under sub-section (1) of Section 17.

Punjab

The following Punjab Amendment Acts have made changes in the Land Acquisition Act, 1894 as applicable to the State of Punjab.

(i) The Punjab Act No. 15 of 1948

The Act has added Section 52A providing that the compensation awarded under the Act would not be liable to seizure, attachment, or sequestration by process of any court at the instance of a creditor, for any demand against the person entitled to compensation, or in satisfaction of a decree or order of any court, and neither the official assignee nor any receiver appointed under any law would be entitled to proceed against or to have any claim on any such compensation in the following two cases:

- (a) before it is actually paid to the person entitled to receive the same; or
- (b) before or after it is actually paid to the person entitled to receive the same in respect of any land which is not liable under the law for the time being in force to attachment or sale in execution of a decree or order of any court.

(ii) The Punjab Act No. 2 of 1954

The Explanation added to Section 17 provided that the section would apply to any waste or arable land notwithstanding the existence thereon of scattered trees or temporary structures, such as huts, pandals or sheds.

The new clause (b) of Section 17(2) empowers the Collector to enter upon and take possession of land with the previous sanction of the Government and immediately after the publication of notification under Section 17(1) for the following purposes also:

"for the purpose of any library or educational institution or for the construction, extension or improvement of any building or other structure in any village for the common use of the inhabitants of such village, or any godown for any society registered under the Cooperative Societies Act 1912 (Act II of 1912) or any dwelling house for the poor, or the construction of labour colonies under a Government-sponsored Housing Scheme, or any irrigation tank, irrigation or drainage channels or any well, or any public road."

The new sub-section 3 to Section 18 provides that any order of the Collector under Section 18 shall be subject to revision by the High Court as if the Collector were a court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, 1908.

The rate of interest under Sections 28 and 34 is reduced from six to four per centum per annum.

(iii) The Punjab Act No. 17 of 1956

The emergency provisions of Section 17(2) have been extended to the construction of "houses for any other class of people" under the Government-sponsored Housing Scheme.

(iv) The Punjab Act No. 47 of 1956

The emergency provisions of Section 17(2) have been extended to a "purpose which in the opinion of the appropriate Government is of urgent importance."

(v) The Punjab Act No. 17 of 1962

Sub-section 2 of Section 12 is amended to require the Collector to send a copy of the award to the State Government also in the cases where acquisition is not for the purpose of the Union.

The new Section 12A enables the Collector to correct any clerical or arithmetical mistake in the award either *suo motu* or on the application of any person interested any time within six months from the date of award, but before the making of reference to the Court under Section 18. The notice of the correction is required to be given immediately to all persons

interested, and to the State Government where the acquisition is not for the purposes of the Union. If any excess amount is found to have been made the person concerned would be liable to refund the excess, and if he defaults or refuses to pay, the same is to be realised as an arrear of land revenue.

The new sub-section 2A and 2B of Section 18 provides that when the State Government considers that the amount of compensation awarded in cases of acquisition of land for purposes other than that of the Union, is excessive, it may require the Collector to refer the matter to the Court for the determination of the amount of compensation. The Explanation provided that in the case of acquisition under Part VII the State Government can require the Collector to make reference to the Court only on the request of the company and on its undertaking to pay all the cost consequent upon such requisition. Such a requisition must state the grounds on which objection to the award is taken, and must be made within six months of the date of award.

In Section 23(1) the words "or be less than the amount awarded by the Collector under Section 11" have been deleted with the result the court can award compensation not exceeding the amount claimed, which may even be less than the amount of the Collector.

Rajasthan

The Rajasthan Land Acquisition Act, 1953, (Act No. 24 of 1953) has consolidated and unified the law of land acquisition in the State of Rajasthan. It has mostly followed the provisions of the Central Act in force on the date of its enactment, and has made unmentioned significant changes. This Act was amended by Acts No. 27 of 1957, 10 of 1959, 15 of 1960, 40 of 1966 and 22 of 1966. The Act No. 27 of 1957 made certain amendments of a verbal nature and extended the Act to the whole of the State and omitted Section 66 of the Act.

(1) The Rajasthan Act No. 24 of 1953

The word 'Government' is used in the place of 'appropriate Government' wherever occur in the Act and the definition of 'appropriate Government' in S. 3(e) is omitted. In the definition of 'public purpose' in S. 3(f) the following is added:

"Planned development of lands from public funds and subsequent disposal thereof in whole or in part by lease or sale or in such other manner as may be directed by the Government with the object of securing further development as planned."

Married women have been excluded from the definition of persons 'entitled to act' in S. 3(g).

The following definitions have been added to Section 3:

(c) the expression collector includes an Additional Collector appointed to a District as well as an officer specially appointed to perform the functions of a Collector under the Act.

(d) The 'court' include any other court empowered by the State Government by notification in the Official Gazette to perform the functions of the court under this Act within the specified local limits of its jurisdiction.

(h) the expression 'code' means the code of Civil Procedure, 1908 (V of 1908).

(i) the expression 'local authority' includes an improvement or development trust constituted under any law for the time being in force in the whole or any part of Rajasthan.

The provisions of Section 5 of the Central Act have been given in sub-section 3 of Section 4 and the new

Section 5 required the Collector or a Revenue Officer specially empowered by the Government to forward to the Government with his remark a report on the result of the survey, if any, and other operations described in and taken under sub-section 2 of Section 4. After considering this report, if submitted, otherwise any time after the issue of Section 4 notification, the Government is required to publish a further notification containing the following:

- (a) sufficient description of the land already notified to enable it to be identified.
- (b) the purpose for which it is or is likely to be needed.
- (c) its approximate area and situation, and
- (d) where a plan has been made of land, the place where such plan may be inspected.

Further the Collector is required to give public notice of the substance of this notification at convenient places on or near the land to be acquired.

NOTE.—Section 4 is substituted and Section 5 has been omitted by Act No. 22 of 1966—see below.

The new sub-section 4 of Section 6 provides as follows:—

"upon the publication of a declaration under sub-section (1), the notification under sub-section (1) of Section (4) shall, so far as it does not include the particular land covered by the said declaration deemed to be cancelled except to the extent, if any, that the Government may, by notification in the Rajasthan Gazette in which the said declaration is published, direct otherwise."

In Section 11, it is further provided that the Collector should, except for reasons beyond his control, make an award within a period of six months commencing from the time fixed under sub-section 2 of Section 9. The new clause (iv) of Section 11 provided that the Collector should also make an award of the costs which, in his opinion should be allowed to any person who is found to be entitled to compensation and who is not entitled to receive the additional sum of ten per centum solatium under S. 23(2), as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector. However, under the new sub-section 2 of Section 11, the Collector may disallow, wholly or in part, costs incurred by any person if he considers that the claim made by such person for compensation is extravagant.

The new Section 12A enables the Collector to correct either on his own initiative or on the application of the parties, any clerical or arithmetical mistakes in the award at any time not later than six months from the date of the award. If the amendment of the award disclosed any overpayment, the Collector has to serve a notice on the persons to whom over-payment was wrongly made to the effect that if the amount overpaid is not credited to Government within a month after the receipt of the notice, such amount would be recovered as arrears of land revenue. Such a notice should be served either immediately after the amendment of the award or after expiry of the time allowed to make a reference to the court against the amendment of the award.

It is provided that the power to take immediate possession of land under sub-section 2 of Section 17 may also be exercised:

"whenever owing to a like emergency or owing to breaches or other unforeseen damage occurring to roads, rivers, channels or tanks it becomes necessary for the Government to acquire the immediate possession of any land for the purpose of maintaining road communication or irrigation or water supply service, at the time may be."

Under the new sub-section 5 of Section 17, the power of taking possession of any waste or arable land in cases of urgency as provided in sub-section (1) can also be exercised in the case of any area which is stated in a certificate by District Magistrate to be unhealthy. Before granting any such certificate the District Magistrate is required by sub-section 6, to serve promptly notice on the interested persons and to hear objections from them without any avoidable delay. Any person sustaining damage in consequence of being suddenly dispossessed of land under these proceedings is required, by sub-section 7, to be paid compensation for such dispossession.

The new Section 17A provides for making over charge of the land to the local authority for the purpose for which it is acquired and possession taken under Section 16 or 17 upon payment of the cost of acquisition and thereafter the land would vest in the local authority. Such a local authority would be liable to pay any further costs which may be incurred on account of the acquisition of land.

Section 18 confers right on the Government department on whose behalf acquisition is being made, in addition to any person interested, to require the Collector to refer the matter to the court where it does not accept the award of the Collector. The new sub-section (3) of Section 18 made provision for the revision of any order of the Collector made under this section by the High Court as if the Collector were a Court subordinate to the High Court within the meaning of S. 115 of Code of Civil Procedure. Under Section 19(c) the Collector is also required to state in the award the costs, if any, awarded under Section 11.

The new Section 22A conferred right on the Government department in whose behalf acquisition is being made to file cross objection to the court whenever any person interested has raised any objection in pursuance of Section 18(1) which has been referred by the Collector for the determination of the Court.

In clause *firstly* of sub-section (1) of Section 23 the date for determination of market value is fixed as the date of declaration under Section 6. The rate of solatium payable under sub-section 2 is reduced to ten per centum on the market value of the land and it is provided that the solatium is not to be paid in the following cases:

- (a) when possession of land under Section 17(1) is taken in the case of any area which is stated in a certificate by a District Magistrate to be unhealthy [S. 17(5)];
- (b) when any land has been acquired for the purpose of any improvement or development trust, unless the land which consists of—
 - (i) building in the actual occupation of the owner or his tenant or occupied free of rent by a relative of the owner and land appurtenant thereto; or
 - (ii) gardens not let out but used by the owner.

The new sub-section 3 of Section 23 laid down different criteria for ascertaining the market value. They are:

- (a) market value of the land shall be the market value according to the use to which the land was put at the date with reference to which the market value is to be determined under the clause and for the purpose of the market value the court shall take into consideration transfers of land similarly situated in similar use and shall not admit evidence that any price actually paid for similar land in similar use contains any element of the potential value of the land transferred for any more lucrative use, and if on the material date the land is subject to any restrictions under any law for the time being in force, the market value shall be assessed taking into account these restrictions.

(b) if it be shown that before such date the owner of the land had taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him,

(c) if the market value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy that use shall be disregarded and the market value shall be deemed to be the market value of the land if put to ordinary uses,

(d) if the market value has been increased by means of any improvement made by the owner or his predecessor-in-interest within one year before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceeding for the acquisition of the land being taken under this Act,

(e) if the market value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded,

(f) if the market value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded and the market value shall be deemed to be the market value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding, and

(g) when the owner of the land or building has, within two years preceding the aforesaid date, made a return of the rent of the land or building to the Government or any local authority, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the court may otherwise direct, and the market value may be determined on the basis of such rent:

Provided that where any addition to, or improvement of the land or building has been made after the date of such latest return and previous to the date with reference to which the market value is to be determined the court shall take into consideration any increase in the letting value of the land or building due to such addition or improvement.

The new Section 24A requires the court to have regard to the following provision also in determining the amount of compensation to be awarded for any land acquired:

- (i) when any interest in any land acquired under this Act has been acquired after the date of the publication of the declaration under Section 6, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land;
- (ii) if in the opinion of the Court any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building than that awarded by the Collector. Further, it has building.

Section 25 has omitted the words "be less than the amount awarded by the Collector under Section 11", with the result the court can allow compensation lesser than that awarded by the Collector. Further, it has omitted sub-section (3).

The rate of interest payable under Sections 28 and 34 has been reduced to four per centum per annum.:

The new sub-section 5 of Section 31 enables the person interested in the land and who is competent to contract, to relinquish his claim to compensation in respect of the land at any stage of the proceedings before the Collector or the Court, and on such relinquishment he is deemed to have received and given a valid discharge for such compensation for the land which would otherwise have been payable to him.

In Section 35 existing sub-section (2) and (3) have been renumbered as (4) and (5) and the following new sub-sections (2) and (3) have been inserted:

(2) Before issuing the direction under sub-section (1), the Government may require a Collector to submit—

- (a) a plan of the land which is needed for occupation and use,
- (b) a report stating whether it is desirable to occupy the land, and
- (c) an estimate of the compensation that would be payable under sub-section (4),

and upon the issue of such a requisition the Collector shall cause public notice of the substance of the requisition to be given at convenient places in the locality in which the land is situated. After the issue of such notice it shall be lawful for any officer either generally or specially authorised by the Collector in this behalf, and for his servants and workmen:

to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work, if any, proposed to be made therein;

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken or the boundaries and line marked, to cut down and clear away any part of the standing crop fence or jungle.

(3) The officer authorised under sub-section (2) shall, at the time of his entry, pay or tender payment for all necessary damage to be done as aforesaid and, in the case of dispute as to the sufficiency of the amount, so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other Chief Revenue Officer of the district and such decision shall be final.

In Section 37 it is provided that provisions of Part III would apply *mutatis mutandis* to the case where the Collector and persons interested differ as to the condition of the land at the expiration of the term of occupation and use under S. 35 or as to any matter connected with the agreement made under S. 36, and that such difference must be referred to the decision of the Court.

The new Section 48A provides for the payment of compensation for the damage suffered by the owner of the land as a result of delay where the Collector has not made an award under Section 11 within one year from the date of publication of the declaration under Section 6 unless the owner of the land has been to a material extent responsible for delay. The provisions of Part III have been made applicable for the determination of such compensation.

The new Section 48B provides that the compensation under Sections 48 and 48A would not be paid when proceedings for the acquisition of land have been

abandoned on the execution of an agreement by the owner of the land or on the acceptance of any payment made to him.

The new sub-section 4 of Section 49 provides as follows:

"For the purpose of sub-section (1) land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

The new Section 56 has made applicable the provisions of the General Clauses Act, 1897 (X of 1897) *mutatis mutandis* to this Act in the same manner as they apply to a Central Act.

(ii) The Rajasthan Act No. 10 of 1959

In Section 3(c) 'Additional Collector' appointed to a district is included in the expression 'Collector'.

(iii) The Rajasthan Act No. 15 of 1960

Section 5 of the Act is omitted and consequently reference to Section 5 in Section 38(2) and Section 45(1) is deleted.

(iv) The Rajasthan Act No. 40 of 1960

The Act has made applicable the Land Acquisition Act to 'housing schemes' with the following changes and is to remain in force for a period of twenty years. However, these changes would not apply to the acquisition of any building.

In the expression 'public purpose' in Section 3(f) has been included 'a housing scheme' as defined in the Act. The 'housing scheme' has been defined as:

"any housing scheme which the State Government may, from time to time, undertake for the purpose of increasing accommodation for housing persons and shall include any such scheme undertaken from time to time with the previous sanction of the State Government by a local authority or a company."

Section 11 is modified to require the Collector to enquire into the value of the land at the relevant date (*i.e.*, December 12, 1953) also in making the award.

In Section 23, clause *firstly* of sub-section (1) is modified to require taking into consideration "the market value of the land at the date of the publication of the declaration under Section 6 or at the relevant date (*i.e.*, December 12, 1953) whichever is less."

Sub-section (2) of Section 23 which provides for the payment of solatium has been omitted.

NOTE.—This amendment seems to suffer the same infirmity as the Madras Act No. 23 of 1961 which was struck down by the Supreme Court in *P. Vajravelu Mudaliar v. Spl. Dy. Collector* (October 5, 1964) for being violative of Art. 14 of the Constitution.

(v) The Rajasthan Act No. 22 of 1966

The existing provisions of Section 4 have been substituted by the following:

"4. Preliminary proceedings preceding intended acquisition.—(1) Whenever the State Government considers it necessary or expedient to acquire land in any locality needed or likely to be needed for a public purpose, it shall by an order published in accordance with the provisions of sub-section (4) of Section 45, require any officer subordinate to it and generally or specially authorised in this behalf, to enter upon or into any land in such locality, accompanied by his servants and workmen, if any:—

- (a) to survey and take levels of such land suitable for such purpose,

- (b) to dig or bore into the sub-soil thereof,
- (c) to set out the boundaries of such land and the intended line of the work, if any, proposed to be carried out thereon or therein,
- (d) where otherwise the survey cannot be completed or the levels cannot be taken or the boundaries or the line cannot be set out to cut down and clear away any part of any standing crop, fence, or jungle,
- (e) to mark the levels taken or the boundaries or the intended line of work by placing marks and cutting trenches,
- (f) to do all other acts necessary to ascertain whether land is suitable for such public purpose, and
- (g) to inquire into and ascertain the particulars of the persons interested in such land;

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without giving such occupier at least seven days notice in writing of his intention to do so.

- (2) A copy of the order made under sub-section (1) shall also be endorsed to the Collector of the district in which such locality is situated with the direction to take suitable action upon receipt of the report under sub-section (4).
- (3) The officer making an entry under sub-section (1) shall, at the time of such entry pay or tender payment for all necessary damages to be done to the land entered upon or into and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute for the decision of the Collector, and such decision shall be final.
- (4) Such officer shall send to the Collector a report on the result of the survey as to the other operations described in or carried on under sub-section (1), as to the enquiries made thereunder and as to the particular land in that locality which may be acquired for the public purpose.
- (5) The Collector shall, upon receipt of such report, cause to be given:—
 - (i) to the head of the Government department at whose instance the order under sub-section (1) shall have been made and to all persons reported under clause (g) of sub-section (1) to be interested in the land proposed thereby to be acquired as being suitable for the public purpose, a notice in the prescribed form of the proposed acquisition, and
 - (ii) a public notice to the like effect at convenient places on or near about the land proposed to be acquired."

Sub-section (1) of Section 5A has been modified as follows:

"Any person interested in any land in respect of which a notice has been given under sub-section (5) of Section 4, as being proposed to be acquired for a public purpose or for a company may within thirty days after the service of the Public notice in the manner provided in Section 45, object to the acquisition of the land or of any land in the locality as the case may be."

Sub-section (1) of Section 6 is modified to require the making of declaration in the prescribed form. Sub-section 4 has been substituted by the following:

- "(4). Upon the publication of the declaration under sub-section (1), the Collector shall—
- take order for the acquisition of the land so declared to be needed for a public purpose or for a company, and

- (ii) cause a plan of such land to be prepared if no such plan shall have been already prepared under Section 4."

Consequently Section 7 and 8 of the Act have been omitted.

Sub-section 2 of Section 9 is amended to provide that the persons interested should be required to appear before the Collector at a time not being earlier than 15 days after the date of the service of notice.

Sub-section (1) of Section 11 is modified to require the Collector *inter-alia* to enquire into the market value of the land at the date of the publication of the declaration under Section 6 and to make an award within a period of three months commencing from the time fixed for appearing the parties under sub-section 2 of Section 9.

The new Section 11A requires the serving of notice on the department at whose instance, or the company for which, proceedings for acquisition have been started, and imposed a duty on the representative of such department or company to be present during the enquiry and to assist the Collector in the completion of the inquiry and in expediting the making of the final award. If they fail to appear the Collector may proceed with the inquiry.

Two new Explanations to sub-section (1) of Section 17 provides that the words 'arable land' includes 'garden land' and that the sub-section applies to any waste or arable land, notwithstanding the existence thereon of scattered trees or temporary structures, such as huts or sheds.

The company for which acquisition is being made has also been given the right under S. 18(1) to require the Collector to refer the matter for the determination of the Court.

The new clause (d) to Section 20 requires the Court to serve notice on the Government department on whose behalf or the company for which acquisition proceedings have been taken if the person interested has applied for reference of the matter to the Court.

Section 22A is modified to confer right, of making cross-objections to the Court on the Company also for which acquisition is being made.

The amended clause seventhly of Section 24 is as follows:—

"Seventhly, any outlay or improvements on, or additions to, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of giving of the notice under sub-section (5) of Section 4."

The Explanation to sub-section (1) of Section 35 provides that the provisions of Explanations 1 and 2 to sub-section (1) of Section 17 would *mutatis mutandis* apply to this sub-section.

A new Chapter VIA "Acquisition of Land for purposes of the Union" has been added. Section 37A has empowered the State Government to acquire land situated in the State for the public purpose of the Union, if a request in writing is made to it by the Central Government or any of its authorised officer. It has further provided for consequent changes in Sections 3, 6, 17A, 48 and 48A. Further it has provided for adding a new Section 36A and sub-section (2A) to Section 48 as follows:

"36A. Liability of the Central Government to pay compensation etc., in cases of temporary occupation of land.—Where land is needed or acquired under Section 35 or Section 36, for the purposes of the Union, the compensation or damage payable under the said sections, shall be paid by the Central Government."

48. "(2A) Where the State Government withdraws from the acquisition upon the request of the Central Government, compensation payable under this section shall be paid by the Central Government."

The new sub-section (2) of Section 38 provides as follows:

"(2) In every such case Section 4 shall be construed as if for the expression 'for a public purpose' or the expression 'for such purpose' or the expression 'for the public purpose', the expression 'for the purpose of the company' were substituted and for the words 'any officer subordinate to it', the words 'any officer of the company' were substituted".

The reference to Section 7 in Section 38A is omitted. Sections 40 and 41 have been amended and new Sections 44A and 44B inserted on the lines of the Central Land Acquisition (Amendment) Act, 1962.

Section 44 is omitted and in Section 45 the following is inserted as sub-section 4:—

"(4) A public notice required to be given under this Act shall be in writing and shall be signed and sealed by the officer giving the same. It shall be affixed at the notice board of the office of such officer and the copies of such notice shall be affixed on the notice board of the Tehsil concerned and on the notice board of the Village Panchayat, if any, constituted under any law for the time being in force. Its contents shall be made widely known in the locality in which the land proposed to be acquired is situated, by affixing copies thereof at some convenient place on or near about such land in other conspicuous public places in the locality or by publishing the same by beat of drums or by advertisement in a newspaper having wide circulation in the locality or by any two or more of these means."

In Section 46 for the expression 'or section 8', the expression 'or by any other provision of this Act', and for the expression 'under Section 4', the expression 'or any other provision of this Act' have been substituted.

In sub-section (3) of Section 49 for the expression 'Section 6 to 10 both inclusive', the expression 'Sections 6, 9 and 10' have been substituted and the expression "furnish a copy of order of the State Government to the person interested, and shall thereafter" has been omitted.

The proviso to sub-section (2) of Section 50 is omitted.

Tamil Nadu (Madras)

The Land Acquisition Act, 1894, as amended by Madras Acts No. 21 of 1948 and 12 of 1953 and 23 of 1961 (only for the purposes of 'housing scheme') is in force in the State. The summary of Madras Acts No. 21 of 1948 and 12 of 1953 have been given under Andhra Pradesh.

The Madras Act No. 23 of 1961

The amendment has extended the application of the Land Acquisition Act, 1948 as in force in the State of Madras to a 'housing scheme' subject to the following modifications.

The 'housing scheme' is defined as any scheme of the State Government for the purpose of 'increasing house accommodation and includes any scheme by a local authority, company or body corporate for such purpose undertaken with the previous sanction of the State Government.

The new clause first of Section 23 provided for taking into consideration—

"the market value of the land at the date of the publication of the notification under Section 4, sub-section (1) or an amount equal to the average

market value of the land during the five years immediately preceding such date, whichever, is less."

The new clause seventhly of Section 23 provided for taking into consideration—

"the use to which the land was put at the date of the publication of the notification under Section 4, sub-section (1)".

The rate of solatium under Section 23(2) has been reduced from 'fifteen per centum' to 'five per centum'.

The new clause eighthly of Section 24 provides for disregarding:

"any increase to the value of the land acquired by reason of its suitability or adaptability for any use other than the use to which the land was put at the date of the publication of the notification under Section 4, sub-section (1)".

NOTE.—This amendment was struck down by the Supreme Court in P. Vajravelu Mudaliar V. Special Deputy Collector (October 5, 1964) under Article 14 of the Constitution because it resulted in the discrimination of two adjacent land of the same quality and value, one of which could be acquired for a housing scheme under it on payment of less compensation, and the other for any other public purpose, like hospitals, university etc., under the Principal Act, on payment of comparatively more compensation.

Uttar Pradesh

The Land Acquisition (U.P. Amendment) Act 1964 (Act No. 23 of 1964)

The Land Acquisition Act, 1894 is applied to the State of Uttar Pradesh with the following changes which do not apply to the acquisition of land for the purposes of the Union.

The following is included in the expression 'public purpose':

- (i) "sanitary improvements of any kind, including reclamation;
- (ii) The laying out of village sites; townships or the extension, planned development or improvement of existing village sites or townships;
- (iii) the settlement of land for agriculture with the weaker section of the people".

The Collector, in addition to the Government, is empowered to issue notification under Section 4(1) and to authorise any officer to act under Section 4(2). The time for filing objections under Section 5A(1) is reduced from thirty days to twenty one days. The Collector is required under Section 12 to send a copy of the award to the Land Reforms Commissioner also.

The new Section 12A enables the Collector to correct any clerical or arithmetical mistakes in the award *suo motu* or on the application of the interested persons within six months from the date of the award, but before a reference under Section 18 is made to the court. The notice of any correction must immediately be given to all persons interested. The person to whom excess amount is found to have been paid is made liable to refund that excess amount and in case of default or his refusal to pay, the same can be realised as an arrear of land revenue.

The new sub-section 1-A of Section 17 enables taking possession of land other than waste or arable lands also when it is acquired for or in connection with sanitary improvements of any kind or planned development.

The new sub-sections 3 and 4 of Section 18 empowered the Land Reforms Commissioner to require the Collector that the matter be referred by him to the

Court for determination of the amount of compensation in a case where he considers that the amount of compensation allowed by the Collector in his award is excessive. However, in case of acquisition for a company the Land Reforms Commissioner can require the Collector to refer the matter to the Court at the request of the company on its undertaking that it will pay all the consequential cost. Such an objection stating the grounds to the award must be taken by the Land Reforms Commissioner within six months from the date of award.

The new Explanation to clause first of Section 23 provides that in judging the market value of the land acquired for or in connection with sanitary improvements of any kind or planned development due regard must be had to the insanitary and inhygienic conditions of the land on the date of the publication of the notification under Section 4(1).

Sub-section 2 of Section 23 which provided for the payment of 15% solatium has been deleted. This change, it is provided, would not affect acquisition of land where notification under Section 4 has been issued prior to the commencement of this Act.

In Section 25(1) the words 'or be less than the amount awarded by the Collector' have been deleted so as to empower the court to award the amount not exceeding the amount claimed, which may even be less than the amount awarded by the Collector under Section 11.

The new sub-section (2) of Section 39 provides that the provisions of only Sections 6 and 7 cannot be put in force in order to acquire land for a society registered under the Societies Registration Act, 1860 without the previous consent of the Government, and unless the Society executed the agreement as provided in Section 41 of the Act.

West Bengal

The Land Acquisition Act, 1894, as modified by the Bengal Amendment Acts Nos. 2 of 1934, 30 of 1963 and 24 of 1964 is in force in the State.

(I) The Bengal Act No. 2 of 1934

In the expression 'Court' in Section 3(d), the following has been included:

"the court of any Additional Judge, Subordinate Judge or Munsif whom the Provincial Government may appoint, by name or by virtue of his office, to perform, concurrently with any such Principal

Civil Court, all or any of the functions of the court under this Act within any specified local limits and, in the case of a Munsif, up to the limits of the pecuniary jurisdiction with which he is vested under Section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887".

(II) The West Bengal Act No. 30 of 1963

In the expression "person interested" in Section 3(b) has been included a person who "cultivates the land or any portion of it as *bargadar*" and the new Explanation stated that "a *bargadar* is a person who under the system generally known as *adhi*, *burga* or *hhag* cultivates the land of another person on condition of delivering a share of the produce of such land to that person."

Clause seventhly is added to Section 23 to provide for taking into consideration "the loss of earning, if any, caused to the person interested, in consequence of the acquisition of the land, where earning was derived directly from such land".

The new sub-section of Section 23 provides that the compensation payable to a *bargadar* for loss of earning under clause seventhly must not exceed three times the net average annual income which was derived or might be derived from the land during three years immediately preceding the date of acquisition. The Explanation to this sub-section provides that "the net annual income of a *bargadar* in any year shall be taken to be fifty per cent of the total produce of the land cultivated by him in that year".

(III) The West Bengal Act No. 24 of 1964

The new Section 32A provides that 'if the person interested entitled to any compensation or costs awarded is a minor or a lunatic, the Collector would have the power to pay the amount of such compensation or costs before it is deposited in the court under sub-section 2 of Section 31 or it may be paid by the court after it is so deposited but before it is invested under Section 32, to the guardian of the minor or to the managers of the estate of the lunatic appointed under the Indian Lunacy Act, 1912, as the case may be, provided if the guardian is not a natural guardian, or a guardian appointed by the will of a minor's father or mother, or a guardian appointed or declared by court and a person empowered to act as or exercise the powers of a guardian by or under any enactment relating to court of wards, the amount of compensation cannot be paid unless the guardian furnishes the prescribed security.

APPENDIX 13

SECRETARIAT OF THE LAND ACQUISITION REVIEW COMMITTEE AS ON THE DATE OF PRESENTATION
OF THE REPORT

<i>Member Secretary</i>	Shri A. M. Harish, Personal Assistant to Chairman.
Shri D. B. Kulkarni.	
<i>*Officer on Special duty Law Officer</i>	<i>Assistants</i>
**Shri Ved Prakash Uppal.	Shri M. S. Goel.
<i>Section Officer</i>	Shri C. S. Jain.
Shri A. N. Saxena.	
<i>Personal Assistants</i>	<i>Lower Division Clerk</i>
Shri M. V. B. Sastri, Personal Assistants to Member	Shri Raj Pal Raju.
Shri G. M. Kapla, Secy.	

*Shri P. C. Suri, worked as Officer on Special Duty upto 31st October, 1969.

**S/Shri S. S. Madan, Rao and Imam temporary Law Officers were also associated with the work of the Committee for some time at its early stages. Shri R. T. Thandani also worked as temporary Law Officer for some time.



APPENDIX 14

TEXT OF RESOLUTION* PASSED BY THE LAND ACQUISITION REVIEW COMMITTEE IN APPRECIATION OF THE WORK DONE BY THE MEMBER-SECRETARY SHRI D. B. KULKARNI

"The Land Acquisition Review Committee, on the conclusion of its deliberations, places on record its warm appreciation of the diligent work done by its Secretary, Mr. D. B. Kulkarni, who, with a keen sense of discrimination, has studied in voluminous detail all problems connected with Land Acquisition in our country, and in the back-ground of the experience of the subject in other countries. Mr. Kulkarni's deep

knowledge of the law on the subject has been of considerable value to the Committee and the report of the Committee bears in all its chapters the impress of his extremely hard, patient and intelligent work done in the preparation of factual materials on the subject in harmony with our recommendations; and the Committee also appreciates the work and cooperation offered by all Members of the Staff of the Committee."

*This Resolution was passed unanimously by the Committee at its Meeting in Bombay on the 16th January, 1970.



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